**PUBLIC VERSION**

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | |
|---|---|
| **In the Matter of**<br>**AT&T CORP.**<br><br>**One AT&T Way**<br>**Bedminster, NJ 07921**<br>**(202) 457-3090**<br><br>***Complainant,***<br>***v.***<br><br>**IOWA NETWORK SERVICES, INC.**<br>**d/b/a Aureon Network Services**<br>**7760 Office Plaza Drive South**<br>**West Des Moines, IA 50266**<br>**(515) 830-0110**<br><br>***Defendant.*** | **Proceeding Number 17-56**<br>**File No. EB-17-MD-001** |

**AT&T'S REPLY TO IOWA NETWORK SERVICES, INC.'S ANSWER**


Letty Friesen
AT&T SERVICES, INC
161 Inverness Drive West
Englewood, CO 80112
(303) 299-5708
(281) 664-9858 (fax)

James F. Bendernagel, Jr.
Michael J. Hunseder
Spencer Driscoll
Morgan Lindsay
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8000
(202) 736-8711 (fax)

Brian A. McAleenan
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
(312) 853-7000
(312) 853-7036 (fax)


Dated: July 5, 2017

*Counsel for AT&T Corp.*

**PUBLIC VERSION**

SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
+1 202 736 8000
+1 202 736 8711 FAX

BEIJING
BOSTON
BRUSSELS
CENTURY CITY
CHICAGO
DALLAS
GENEVA
HONG KONG
HOUSTON
LONDON
LOS ANGELES
MUNICH
NEW YORK
PALO ALTO
SAN FRANCISCO
SHANGHAI
SINGAPORE
SYDNEY
TOKYO
WASHINGTON, D.C.

mhunseder@sidley.com
(202) 736 8236

FOUNDED 1866

July 5, 2017

**By Hand Delivery And ECFS**

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***AT&T Corp. v. Iowa Network Services, Inc.*, Proceeding Number No. 17-56; File No. EB-17-MD-001**

Dear Ms. Dortch:

AT&T Corp. ("AT&T") submits for filing the **Public Version** of its Reply to the Answer of Iowa Network Services, Inc. d/b/a Aureon Network Services ("INS") in the above-refernced proceeding. Consistent with the Commission's rules and the February 24, 2017, Protective Order entered by the Commission Staff, AT&T has redacted all confidential, highly confidential and third party highly confidential information from the **Public Version**, which it is filing by hand and ECFS.

AT&T is also filing by hand with the Secretary's office hard copies of the **Confidential, Highly Confidential** and **Third Party Highly Confidential Versions** of the submission. AT&T is also separately filing by hand the **Confidential, Highly Confidential** and **Third Party Highly Confidential Versions** of this submission. In addition, copies of all versions of the submission are being served electronically on INS's counsel. Electronic courtesy copies are also being provided to the Commission's Enforcement Bureau.

Please contact me if you have any questions regarding this matter.

Sincerely,

Michael J. Hunseder

Enclosures

cc: James L. Troup, Counsel for Defendant
Tony Lee, Counsel for Defendant
Lisa Griffin, FCC
Anthony DeLaurentis, FCC
Christopher Killion, FCC

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | |
|---|---|
| **In the Matter of**<br><br>**AT&T CORP.**<br>**One AT&T Way**<br>**Bedminster, NJ 07921**<br>**(202) 457-3090**<br><br>***Complainant,***<br><br>***v.***<br><br>**IOWA NETWORK SERVICES, INC.**<br>**d/b/a Aureon Network Services**<br>**7760 Office Plaza Drive South**<br>**West Des Moines, IA 50266**<br>**(515) 830-0110**<br><br>***Defendant.*** | **Proceeding Number 17-56**<br>**File No. EB-17-MD-001** |

**AT&T'S REPLY TO THE ANSWER, RESPONSE TO AFFIRMATIVE DEFENSES, AND INFORMATION DESIGNATION**

Set forth below are AT&T's specific replies to the numbered paragraphs set forth in the Defendant's Answer. Any claims that are not specifically addressed are denied.

1. Paragraph 1 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

2. AT&T denies that INS has lawfully billed AT&T for CEA service and denies that INS's CEA tariffs are applicable, lawful and/or in compliance with the Commission's rules and/or the Communications Act for the all reasons set forth in AT&T's Complaint, Legal Analysis, and Reply Legal Analysis.

AT&T denies that this dispute primarily involves "terminating CEA traffic" and/or "AT&T's failure to pay the lawful tariff rate for CEA service." AT&T's Complaint is primarily directed at INS's decision to transport large volumes of CLEC access stimulation traffic, which does not involve CEA service, and then to charge unlawful and excessive tariff rates that apply only to legitimate CEA service. Compl. §§ I-IV.

Although legitimate CEA service can include originating or terminating traffic, a principal reason that CEA service was authorized was to provide equal access, which is an originating-only service. *See* Compl. § I.

AT&T denies the allegations in the fourth and fifth sentence of paragraph 2, which at most apply only to legitimate CEA traffic, but in fact, due to robust competition in the long distance market, smaller IXCs today would not need to purchase facilities to or from Iowa carriers but could rely on wholesale services at market prices. *See* AT&T Reply Legal Analysis, Part I.

AT&T denies that INS's charging of a flat-rated price has any relevance to this proceeding, and the appropriate rate for transport service on access stimulation traffic is far lower than INS's flat-rated CEA tariff rate. *See* AT&T Legal Analysis, at 49-53 & n.83. On the same grounds, AT&T further denies that INS's CEA service is "affordable" (either on access stimulation traffic or legitimate CEA service, *see* Compl. § V), and also denies that there is any "mandatory terminating use policy" for INS's services. *See* AT&T Legal Analysis, Part I.C.4.; AT&T Reply Legal Analysis, Intro. and Part I.

AT&T denies that it had a "monopoly" in long distance services in 1988, and further denies that the Commission determined that INS's CEA network "would not be economically viable" or that it forever "ordered AT&T to route" all types of terminating traffic over INS's CEA network, for the reasons stated in Section I and II of AT&T's Complaint and Part I of AT&T's Legal Analysis.

AT&T admits that, as a general matter, there can be an inverse relationship between traffic volumes and costs (and thus rates), and, given the very large increases in INS's traffic, its rates should have declined substantially but they did not because INS manipulated its rates. *See* AT&T Legal Analysis, Part IV. AT&T denies that INS has shown that the exclusion of AT&T's traffic would have increased (or would increase) CEA rates; INS's CEA rates are inflated because INS has manipulated its rates and imprudently sized its network. *See id*.; AT&T Reply Legal Analysis, Parts I and IV.

AT&T also denies the last two sentences of paragraph 2. There were not large volumes of terminating calls (such as conference calls) to rural exchanges in Iowa in 1988, and thus large volumes of such traffic were not encompassed within the Commission's grant of 214 authority to INS. *See* Compl. §§ I-II. AT&T denies that CEA service is defined in INS's tariff, or that INS provided CEA service on the access stimulation traffic in question. *See id*.

3. AT&T denies the allegations in the second sentence in paragraph 3 of the Answer that INS properly developed its revenue requirement. *See* Compl. § V; AT&T Legal Analysis, Part IV; AT&T Reply Legal Analysis, Part IV.

AT&T denies the allegations in the third sentence in paragraph 3 of the Answer (except that INS has traditionally been treated as a carrier with market power): Because INS is a LEC offering switched access services, and is engaged in access stimulation and is a "CLEC" within the access stimulation rules, INS is subject to the rate cap and rate parity rules (Compl. § III) and should have reduced its rates (*id.* § IV).

AT&T denies the allegations in the fourth sentence of paragraph 3; regardless of INS's "dominant" carrier status, because INS is a LEC and is now carrying primarily access stimulation traffic, it is not primarily a provider of legitimate CEA service, and is subject to the Commission's rules applicable to LECs, including the rate cap and rate parity rules and the access stimulation rules. *See* Compl. §§ I-IV; AT&T Reply Legal Analysis, Intro. and Parts II-III.

AT&T denies the allegations in the fifth sentence of paragraph 4, because INS did not properly calculate its rates or reduce them as required. *See* Compl. §§ III-V.

AT&T denies the allegations in the sixth sentence of paragraph 4, because there is no longer any mandatory use requirement, and no such requirement ever existed as to CLECs or access stimulation traffic. *See* AT&T Legal Analysis, Part I.C.4; AT&T Reply Legal Analysis, Intro. and Part I.

AT&T denies the allegations in the seventh sentence of paragraph 4; INS has not shown that removal of access stimulation (to the extent it has not already been removed in part due to bypass) would raise INS's CEA rates or harm rural consumers; any INS financial difficulties are due to INS's decisions, including for example its decision to invest in a larger network to carry access stimulation traffic even though it is an arbitrage scheme that the Commission and the Iowa Utilities Board sought to curtail. *See* Compl. ¶ 41 & n.43; AT&T Legal Analysis, Part IV.

AT&T denies the allegations in the eighth sentence of paragraph 4, for the same reasons as the prior sentence, and AT&T further denies that access stimulation CLECs either (1) cannot provide equal access on their own without INS, or (2) are providing any significant local service to "small towns and rural areas of Iowa," because most of their traffic is access stimulation traffic. Compl. §§ I-II, IV.

AT&T denies the allegations in the ninth sentence of paragraph 4, because the IUB did not "require" INS to carry large volumes of interstate terminating access stimulation traffic. In fact, the IUB found intrastate access stimulation to pose public interest harms. *See* AT&T Reply Legal Analysis, Part I.B.

AT&T denies the allegations in the ninth sentence of paragraph 4, and INS has engaged in access stimulation and is a party to access revenue sharing agreements. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part III.

4. AT&T denies the allegations in paragraph 4 of the Answer. As to the first sentence, AT&T denies that INS properly billed AT&T the rates in its CEA tariff (or that those rates were reasonable). Compl. §§ II-V. AT&T further denies the remaining sentences regarding INS's access stimulation activities, *see* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part III.

5. AT&T denies the allegations in paragraph 5 of the Answer: AT&T denies that the Commission (or the IUB) authorized INS to provide and bill for CEA service on access stimulation traffic to CLECs. *See* Compl. §§ I.A., II; AT&T Legal Analysis, Part I; AT&T Reply Legal Analysis, Part I. When the Commission authorized INS to offer CEA service, there were no CLECs and no access stimulation traffic – to the contrary, INS was authorized because the participating ILECs could not offer equal access and had very low traffic volumes. *See* Compl. §§ I.A., II; AT&T Legal Analysis, Part I. AT&T also denies that any mandatory use requirement exists as to CLECs or access stimulation traffic, including the access stimulation traffic routed by INS on its CEA network. *See* AT&T Legal Analysis, Part I.C.4; AT&T Reply Legal Analysis, Intro. and Part I.

6. AT&T denies the allegations in paragraph 6 of the Answer: The IUB has never required INS to enter into agreements regarding interstate transport to CLECs engaged in access stimulation. *See* AT&T Reply Legal Analysis, Part I. INS's CEA tariff allows INS to bill for legitimate CEA service, but the traffic in dispute is access stimulation traffic to CLECs that do not require legitimate CEA service on such traffic. *See* Compl. §§ I-II. AT&T denies that the Act's

limitations period means that all facts prior to limitations period are irrelevant. The point is that INS is primarily not a legitimate CEA provider, but rather handles mostly access stimulation traffic, and even though INS's traffic volumes have decreased somewhat since 2011 (whether from bypass, or declines in legitimate CEA service, or other reasons), INS still carried in 2016 at least *2 billion* minutes of access stimulation traffic (and the same is true of INS's revenues). *See* Compl. § I-II; *see also infra* ¶¶ 48-49. It is thus undeniable (and INS does not deny) that INS carried enormous volumes of access stimulation traffic (which INS plainly knew and identified in its tariff filings), which it then improperly billed using its tariffed rate for CEA service. *See* Compl. §§ I-II. AT&T denies the allegations in the last sentence of paragraph 6, relating to access stimulation: INS has engaged in access stimulation, as INS's ratio of terminating minutes to originating minutes has been well above the 3-to-1 ratio every single year since 2008 and INS has agreements with access stimulating CLECs that constitute access revenue sharing agreements under the Commission's rules. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; Reply Legal Analysis, Part III.

7. INS failed to respond to AT&T's specific factual allegation in the first sentence of paragraph 7 about the very high percentage of access stimulation traffic, and AT&T's allegation is deemed as admitted. AT&T denies the allegations in paragraph 7 of the Answer. These allegations are substantially similar or identical to the allegations in paragraphs 2 and 4, of the Answer, and AT&T hereby incorporates its response to those allegations. *See also* AT&T Reply Legal Analysis, Parts II-IV.

8. INS did not specifically address AT&T's allegation that, although AT&T is currently billed for terminating switched access charges by approximately 1,300 LECs, INS is

responsible for over 12 percent of AT&T's total, nationwide terminating switched access expense. It is therefore deemed admitted.

AT&T denies the allegations in paragraph 8 of the Answer. As to the second sentence, AT&T denies that INS has properly billed its CEA tariff rate for the traffic that AT&T has routed to the CEA network and/or that its CEA tariff rate is just and reasonable. Compl. §§ II-V. The allegations in the third sentence are identical to INS's allegations in paragraphs 2 and 4, and AT&T incorporates its response herein.

AT&T denies INS's claims that consumers do not subsidize INS – INS carries mostly access stimulation traffic, and it has not reduced its rates to account for that traffic, and in such circumstances, the Commission has already found that ordinary long distance and wireless consumers subsidize the access stimulation activities. *Connect America Order* ¶¶ 662-63. Although INS does not receive explicit subsidies, any such receipt would have been improper and contrary to the public interest, because the record reflects that INS already has obtained many millions of dollars of implicit subsidies through its collection of charges on access stimulation traffic. *See* Compl. § I.

AT&T denies that INS's charging of a flat-rated price has any relevance to this proceeding, and the appropriate rate for transport service on access stimulation traffic is far lower than INS's flat-rated CEA tariff rate. *See* AT&T Legal Analysis, at 49-53 & n.83.

AT&T denies the allegations in the last two sentences of paragraph 8 of the Answer. As to the percentage of traffic INS billed to AT&T versus other IXCs, INS has not produced any records to substantiate its claim, and it is therefore denied. Further, if there is an increase in the proportion of traffic that would be due to bypass of INS; INS provides no citation for its claim that "apparently" any supposed increase is "the result of wholesale terminating service that

AT&T has sold." In fact, AT&T's wholesale traffic is low. Reply Decl. of D. Rhinehart.

9. AT&T denies that INS's conduct has been lawful and reasonable in every respect for the reasons set forth in AT&T's Complaint, Legal Analysis, and Reply Legal Analysis.

10. AT&T denies the second sentence of paragraph 10. There were not large volumes of terminating calls (such as conference calls) to rural exchanges in Iowa in 1988, and thus large volumes of such traffic were not encompassed within the Commission's grant of 214 authority to INS. *See* Compl. §§ I-II. AT&T also denies there is any mandatory use policy. AT&T also denies that INS's CEA rate could be increased, because that rate is capped under the Commission's rate cap and rate parity rules. Compl. § III. In any event, INS has not shown that removal of terminating access stimulation traffic (to the extent it has not already been removed in part due to bypass) would raise INS's CEA rates; INS's revenue requirement is inflated due to INS's decisions, including for example its decision to invest in a larger network to carry access stimulation traffic even though it is an arbitrage scheme that the Commission and the Iowa Utilities Board sought to curtail. AT&T also denies that INS's CEA tariff encompasses access stimulation traffic, that INS properly billed AT&T, or that INS fully complied with Section 201(b) or 203, for the reasons set forth in AT&T's Complaint, Legal Analysis, and Reply Legal Analysis.

11. INS's Answer to paragraph 11 of the Complaint is not responsive to the allegation that access stimulation CLECs (or their customers) have no need for equal access, and that allegation is deemed admitted. AT&T denies the allegations in paragraph 11 of the Answer, which are substantially the same as those in paragraphs 2, 3 and 5, and AT&T incorporates its responses to those paragraphs herein.

12. AT&T denies the allegations in paragraph 12 of the Answer. AT&T denies that the Commission authorized INS to provide and bill for CEA service on access stimulation traffic

to CLECs. *See* Compl. §§ I.A., II; AT&T Legal Analysis, Part I. When the Commission authorized INS to offer CEA service, there were no CLECs and no access stimulation traffic – to the contrary, INS was authorized because the participating ILECs could not offer equal access and had very low traffic volumes. Compl. §§ I.A., II; AT&T Legal Analysis, Part I. AT&T also denies that any mandatory use requirement exists as to CLECs or access stimulation traffic. *See* AT&T Legal Analysis, Part I.C.4. AT&T denies that INS has complied with its CEA tariff and/or the Communications Act and denies that AT&T is obligated to pay INS the amounts INS billed AT&T for the reasons set forth in AT&T's Complaint, Legal Analysis, and Reply Legal Analysis.

13. INS failed to respond to the specific factual allegation in paragraph 11 (and paragraph 77) of the Complaint regarding the savings associated with CenturyLink's direct connection service, and that allegation is deemed admitted.

AT&T denies the allegations in Paragraph 13 of the Answer. As AT&T explained, there is no basis in law or fact to conclude that any mandatory use policy has been applied to access stimulation traffic to CLECs. *See, e.g.*, AT&T Legal Analysis, Part I.C.4; Habiak Decl. ¶¶ 29-32; AT&T Reply Legal Analysis, Intro. and Part I.

As to INS's claims about 47 C.F.R. § 69.112(i), that regulation helps AT&T, not INS. As an initial matter, because INS is handling primarily access stimulation traffic, it is not providing CEA service on such traffic, nor is it acting in its capacity as a CEA provider. As such, while INS need not provide direct trunked transport on legitimate CEA traffic, nothing in Section 69.112 applies to INS when it voluntarily transports access stimulation traffic. As such, section 69.112(i) does not support any "mandatory use" requirement as to access stimulation traffic. For the same reasons, the Commission 1992 *Transport Rate Structure Order* (7 FCC Rcd. 7006 (1992)) does not help INS, as at that time the CEA providers described in that *Order* were providing exclusively legitimate CEA traffic, and were not handing access stimulation traffic.

Further, the regulation does not exempt any and all "subtending LECs" from the duty to provide direct trunked transport. Rather, it merely provides that "[t]elephone companies that do not have measurement and billing capabilities at their end offices are not required to provide direct-trunked transport services *at those end offices without measurement and billing capabilities*." 47 C.F.R. § 69.112(i) (emphasis added). That language was put in place in 1992, and INS offers no evidence that any of the end offices of any of its subtending LECs today lack "measurement and billing capabilities." For the same reasons, the Commission 1992 *Transport Rate Structure Order* (7 FCC Rcd. 7006 (1992)) does not help INS, as at that time there were no competitive LECs and no access stimulation traffic.

Other than this exemption, Section 69.112(i) provides that "[a]ll other telephone companies shall provide a direct-trunked transport service." As such, the access stimulation CLECs are required to provide (or at least permit) a direct trunked transport service, both under Section 69.112(i) and the Commission's access stimulation rules, as well as the Commission's *PrairieWave Order*. *See* AT&T Legal Analysis at 26–27, 43, 45-47, & nn.72-73; AT&T Reply Legal Analysis Part I. Section 69.112(i) thus further undercuts INS's claim (e.g., Affirmative Defense E) that it is improper to request direct trunking from INS's subtending LECs, particularly those CLECs engaged in access stimulation.

AT&T denies the allegations regarding the IUB, because the IUB did not require INS to carry large volumes of interstate terminating access stimulation traffic. In fact, the IUB found intrastate access stimulation to pose public interest harms. *See* AT&T Reply Legal Analysis, Part I.B.

AT&T also denies that INS's traffic agreements or INS's mandatory use policy is "pro-competitive." INS's agreements with access stimulation CLECs did not "maintain" INS's traffic volumes, but substantially inflated them by about 2-3 billion minutes annually. Nor is such traffic necessary to keep INS's CEA rate "affordable." AT&T also denies that INS's improper billing of CEA service on access stimulation helps smaller IXCs, for the reasons stated in its Reply Legal Analysis. As INS's allegations about "fifteen IXCs" and "seventeen IXCs" that allegedly use INS' service, INS failed to produce documentation about these IXCs, and the allegations are therefore denied.

14. AT&T admits that INS continues to be classified as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)), but AT&T denies that this classification excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis Part II; AT&T Reply Legal Analysis, Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. As such, AT&T denies that INS's CEA tariffs comply with the Commission's rules. AT&T denies any other allegations in paragraph 14 of the Answer.

15. AT&T denies the allegations in Paragraph 15 of the Answer. AT&T denies that INS has not engaged in access stimulation and/or is not a party to any access revenue sharing agreement and/or is not a LEC. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part III. INS has engaged in access stimulation, as INS's ratio of terminating minutes to originating minutes has been well above the 3-to-1 ratio every single year since 2008 and INS has agreements with access stimulating CLECs that constitute access revenue sharing agreements under the Commission's rules. *See* Compl. § IV.B; AT&T Legal Analysis, Part III;

AT&T Reply Legal Analysis, Part IV. INS has agreements with access stimulating CLECs that constitute access revenue sharing agreements under the Commission's rules. *See* Complaint § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part IV.

16. AT&T denies and disagrees with all the allegations and/or arguments in paragraph 16 of the Answer for the reasons set forth in Section V of the Complaint, Part IV of the Legal Analysis and Reply Legal Analysis, and the Rhinehart Declarations. *See also infra* ¶¶ 118, 121-22.

17. AT&T denies and disagrees with all the allegations and/or arguments in paragraph 17 of the Answer. *See* Compl. ¶ 155.

18. AT&T denies that its formal complaint does not support a finding of any wrongdoing by Aureon for the reasons set forth in AT&T's Complaint, Legal Analysis, and Reply Legal Analysis.

19. Paragraph 19 of the Answer does not contain any factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

20. AT&T denies that its claims fail as a matter of fact and law for all of the reasons stated in its Complaint, Legal Analysis, and accompanying Reply Legal Analysis. Paragraph 20 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

21. AT&T denies that its submission does not support a finding that Aureon has violated the Commission's rules or the Communications Act for all of the reasons stated in its Complaint, Legal Analysis, and accompanying Reply Legal Analysis. Paragraph 21 of the Answer

does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

22. Paragraph 22 of the Answer does not contain any factual allegation or legal argument that AT&T is required to address in this Reply.

23. AT&T denies that it has not made a good faith effort to discuss the possibility of settlement and that it has "refused" to participate in mediation; rather, AT&T has asserted that consideration of mediation is premature. Paragraph 23 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

24. AT&T denies that the Great Lakes complaint proceeding and AT&T forbearance petition are irrelevant because they involve the same subject matter at this dispute. *See, e.g.*, AT&T Legal Analysis, Part III.B at 44. AT&T denies that INS is not a LEC or a CLEC; INS is a LEC, and INS is also a CLEC, at least for certain of the Commission's rules (including the rate cap and rate parity rules). Regarding its status as a LEC, INS admits that it provides "interstate or intrastate exchange access" services, and under the Act and the Commission's rules carriers who provide such services are defined as LECs. *See* AT&T Legal Analysis, Part II at 28-29. Paragraph 24 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

25. AT&T denies that it has any obligations to INS under Section 201(a) and also denies that the Commission established a "through route" under Section 201(a) when approving INS as a CEA provider. The Commission's Order approving INS as a CEA provider contains no reference to Section 201(a), and it did not conduct a Section 201(a) hearing. *See* AT&T Reply Legal Analysis, Part I.B.4, at 19. Paragraph 25 of the Answer does not contain any other factual

allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

26. AT&T denies that INS is not a LEC; INS is a LEC. INS admits that it provides "interstate or intrastate exchange access" services, and under the Act and the Commission's rules carriers who provide such services are defined as LECs. *See* AT&T Legal Analysis, Part II at 28-29. Paragraph 26 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

27. AT&T denies that CLECs are irrelevant to the proceeding. AT&T denies that CEA service is defined in the tariff. The tariff contains no definition for the term "Centralized Equal Access Service," and therefore to interpret that term one must look to the Commission's decisions initially approving the provision of CEA service. *See* AT&T Legal Analysis, Part I.A at 6. AT&T denies that INS is not a party to any access revenue sharing agreement. *See* Compl. ¶¶ 50-56; AT&T Legal Analysis, Part III. Paragraph 27 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

28. AT&T denies that INS is not a party to any access revenue sharing agreement. *See* Compl. ¶¶ 50-56; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part III.A&B. Paragraph 28 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

29. AT&T denies that this proceeding is limited to CEA service because access stimulation traffic does not fall within the scope of CEA service; also, Aureon also is engaged in access stimulation, which again is not CEA service. *See* AT&T Legal Analysis, Part I.A.2 at 10-12; AT&T Reply Legal Analysis, Part I.A and Parts III.A&B. AT&T denies that it failed to pay

any billed amount it was obligated to pay. Because INS's CEA tariff does not cover access stimulation traffic, INS's CEA bills improperly included charges that were not authorized by INS's tariff, and AT&T has no obligation to pay such charges. *See* AT&T Legal Analysis, Part I.A.3 at 13-14; AT&T Reply Legal Analysis, Parts I.A&B.

Paragraph 29 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

30. AT&T denies that its complaint fails to support a finding that INS has violated the Commission's rules or the Communications Act for all of the reasons explained in the Complaint, Legal Analysis and Reply Legal Analysis. Paragraph 30 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

31. AT&T admits that a CEA network can be used for purposes other than the equal access function, which exclusively concerns originating functions, but denies that any such purposes were the reason INS and other CEA providers were approved. *See* Compl. ¶¶ 31-36; AT&T Legal Analysis, Part I.A.1, at 7-9; AT&T Reply Legal Analysis, Parts I.A-B. AT&T further denies that access stimulation is included within CEA service as described by the Commission in its approval orders, or that access stimulation was one of the purposes for which INS or other CEA providers were approved. *See* Compl. ¶¶ 31-36, 62-80; AT&T Legal Analysis, Part I.A at 6-14. AT&T denies that access stimulation is encompassed within CEA traffic or the mandatory use requirement. *See* AT&T Legal Analysis, Part I.A.2; AT&T Reply Legal Analysis, Part I.B.5. Therefore, the absence of any "exclusion" of access stimulation from the mandatory use requirement or definition of CEA service is irrelevant. *See* AT&T Reply Legal Analysis, Part

I.B.5. AT&T denies that access stimulation is included within CEA services as described by the Iowa Utilities Board in its orders. *See* AT&T Legal Analysis, Part I.A.1 at 8, n.8. Paragraph 31 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied

32. AT&T denies that its competitors for long distance service ever sought, or needed, to compete with AT&T on terminating traffic to rural areas, or that competition among long distance carriers regarding termination of calls has ever existed, or would be beneficial if it had. INS offers no evidence of any competition, or desire to compete, among long distance carriers to terminate calls; at most it offers the conclusory conjecture of its witness, Mr. Hilton. Moreover, the Iowa Utilities Board found that INS does not perform any aggregation or concentration function for terminating calls they way it does for originating calls. AT&T Reply Legal Analysis, Part I.B.2. Paragraph 32 of the Answer otherwise does not contain any factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

33. AT&T admits that a CEA network can be used for certain purposes other than the equal access function, which exclusively concerns originating functions, but denies that any such purposes, and in particular facilitation of termination long distance calls, were key reasons for the approval of INS and other CEA providers. *See* Compl. ¶¶ 31-36; AT&T Legal Analysis Part I.A.1, at 7-9; AT&T Reply Legal Analysis, Part I.B.2. AT&T further denies that access stimulation is included within CEA service as described by the Commission in its approval orders, or that access stimulation was one of the purposes for which INS or other CEA providers were approved. *See* Compl. ¶¶ 31-36, 62-80; AT&T Legal Analysis, Part I.A at 6-14; AT&T Reply Legal Analysis,

Part I. Paragraph 33 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

34. AT&T denies that traffic volume is unrelated to the costs of providing service in rural areas. While AT&T denies that, for legitimate CEA traffic as envisioned by the Commission's CEA Orders, there is a different between a "thin" market in terms of the number of potential customers and expected volumes, because access stimulation was not contemplated by the Commission and therefore areas with few customers were expected to produce low volumes. *INS Order* ¶¶ 3, 38–40. AT&T further denies that access stimulation is included within CEA service as described by the Commission in its approval orders, or that access stimulation was one of the purposes for which INS or other CEA providers were approved. *See* Compl. ¶¶ 31-36, 62-80; AT&T Legal Analysis, Part I.A at 6-14; AT&T Reply Legal Analysis, Part I. Paragraph 33 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

35. AT&T denies that overall cost effectiveness, for AT&T as well as other IXCs, is irrelevant to CEA service. *See* AT&T Legal Analysis, Part I.B at 16 (*citing Alpine*); AT&T Reply Legal Analysis, Part I.A, n.4. Paragraph 53 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

36. AT&T denies that access stimulation is included within CEA service as described by the Commission in its approval orders, or that access stimulation was one of the purposes for which INS or other CEA providers were approved. *See* Compl. ¶¶ 31-36, 62-80; AT&T Legal Analysis, Part I.A at 6-14. Furthermore, AT&T denies that access stimulation traffic is encompassed within the mandatory use requirement. *See* AT&T Legal Analysis, Part I.A.2;

AT&T Reply Legal Analysis, Part I.B.5. AT&T further denies that access stimulation is included within CEA services as described by the Iowa Utilities Board in its orders, or that the Iowa Utilities Board allowed INS to recover for the costs of terminating calls (save for certain recording functions). *See* AT&T Legal Analysis, Part I.A.1 at 8, n.8; AT&T Reply Legal Analysis, Part I.B.2. AT&T denies that INS's CEA rates will go up if INS is not allowed to impose its CEA rates on access stimulation traffic for several reasons. INS has not substantiated any such claim, Commission policy bars using access stimulation, a "wasteful" practice that harms consumers, to subsidize other services, other CEA providers that stopped carrying access stimulation traffic did not increase their rates after the access stimulation traffic was removed, and AT&T has demonstrated that the cost studies and ratemaking methodologies used to support INS's current rates contain significant flaws that, if corrected, could mean that rates would not rise much even if access stimulation traffic is excluded. *See* AT&T Legal Analysis, Part IV.A; AT&T Reply Legal Analysis, Part I.B.3. AT&T denies that access stimulation traffic should be included as CEA because it enables the accurate measurement of terminating traffic, particularly for CLECs engaged in access stimulation that have advanced switches, an argument completely unsubstantiated in the evidence. AT&T denies that access stimulation traffic is critical to maintaining CEA service. *See* AT&T Reply Legal Analysis, Part I.B.3. AT&T denies that decisions related to CEA service outside of Iowa are irrelevant to a dispute about CEA service. *See, e.g.*, AT&T Legal Analysis, Part I.C.4 at 25-26. Paragraph 36 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

37. Paragraph 37 of the Answer does not contain any factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

38. Paragraph 38 of the Answer does not contain any factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

39. AT&T denies that the alleged fact that INS's minutes are declining is relevant to the issues here. While INS's minutes in 2015 were down from the extraordinarily high levels seen in recent years, they were still more than 1.2 billion minutes higher than in 2005, when INS began carrying access stimulation traffic, and nearly 2 billion minutes higher than they would have been if access stimulation traffic were properly excluded. *See* Compl. ¶ 40. AT&T denies that volume data before 2012 is irrelevant to this dispute because it concerns the impact of access stimulation traffic on INS's business and rates. Paragraph 39 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

40. AT&T denies that the growth in traffic has not been "huge," because INS in 2015 carried 1.2 billion more minutes than it did in 2005. AT&T denies that the alleged fact that INS's minutes are declining is relevant to the issues here. While INS's minutes in 2015 were down from the extraordinarily high levels seen in recent years, they were still more than 1.2 billion minutes higher than in 2005. *See* Compl. ¶ 40. Growth in revenue since 2005 has also been significant, and even if revenue in 2015 is down from the extraordinarily high levels seen in recent years, they were still more than $10 million more than in 2005, when INS began carrying access stimulation traffic. *See* Compl. ¶ 40. Paragraph 40 of the Answer does not contain any other factual allegation

or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

41. AT&T admits that a CEA network can be used for purposes other than the equal access function, which exclusively concerns originating functions, but denies that any such purposes were the key reasons for approval of INS and other CEA providers. *See* Compl. ¶¶ 31-36; AT&T Legal Analysis, Part I.A.1, at 7-9. AT&T further denies that access stimulation is included within CEA service as described by the Commission in its approval orders, or that access stimulation was one of the purposes for which INS or other CEA providers were approved. *See* Compl. ¶¶ 31-36, 62-80; AT&T Legal Analysis, Part I.A at 6-14; AT&T Reply Legal Analysis, Part I. AT&T denies that the alleged fact that INS's revenues are declining is relevant to the issues here. While INS revenue in 2015 were down from the extraordinary high levels seen in recent years, they were still more than $10 million more than in 2005, when INS began carrying access stimulation traffic. *See* Compl. ¶ 40. Regarding interconnection agreements with wireless carriers, AT&T denies that they do not represent a business expansion because INS is engaged in a new, different business than that for which it was approved, and any regulatory mandate to engage in that business is irrelevant to that fact. Paragraph 41 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

42. AT&T admits that a CEA network can be used for purposes other than the equal access function, which exclusively concerns originating functions, but denies that any such purposes were key reasons for approval of INS and other CEA providers. *See* Compl. ¶¶ 31-36; AT&T Legal Analysis, Part I.A.1, at 7-9. AT&T further denies that access stimulation is included within CEA service as described by the Commission in its approval orders, or that access

stimulation was one of the purposes for which INS or other CEA providers were approved. *See* Compl. ¶¶ 31-36, 62-80; AT&T Legal Analysis, Part I.A at 6-14; AT&T Reply Legal Analysis, Part I. Paragraph 42 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

43. AT&T denies that INS has never engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III. Under INS's traffic agreements with access stimulation CLECs, INS provides services to the CLECs (including switching and transmission) at no charge, and thus those agreements constitute revenue sharing agreements. AT&T Legal Analysis, Part III.A; AT&T Reply Legal Analysis, Part III. AT&T further denies that INS is not required to reduce its rates because it has engaged in access stimulation. AT&T Legal Analysis, Part III.B. Under the access stimulation rules, INS is reasonably considered a CLEC. *Id*. In any event, even if INS were considered as a "rate-of-return" local exchange carrier under the access stimulation rules, INS would need to refile and reduce its rates because its costs and demand were not reflected in INS's tariff filing; rather, INS has manipulated its CEA rates. *See* Compl. § V; AT&T Legal Analysis, Part IV; AT&T Reply Legal Analysis, Part IV.

44. AT&T denies that INS has not engaged in access stimulation and/or is not a party to any access revenue sharing agreement and/or is not a LEC. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part III. INS has engaged in access stimulation, as INS's ratio of terminating minutes to originating minutes has been well above the 3-to-1 ratio every single year since 2008 and INS has agreements with access stimulating CLECs that constitute access revenue sharing agreements under the Commission's rules. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part IV. AT&T denies all of the

factual and legal assertions in the last three sentence of paragraph 44 of the Answer. *See* Compl. §§ I-V. As explained by AT&T, INS's rates have not declined, despite enormous increases in traffic volumes – and in fact INS unlawfully raised its rates above the applicable rate caps. Compl. §§ III, V. Further, as the Commission has found, access stimulation on the scale practiced by INS harms IXCs and their customers (*Connect America Order* ¶¶ 662-65). The appropriate rate for transporting large volumes of access stimulation traffic is far lower than INS's tariffed rates. *See* Compl. § II.A.2; AT&T Legal Analysis, at 49-53 & n.83.

45. AT&T denies that INS is not a CLEC and that it is not a party to an access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part III. INS has agreements with access stimulating CLECs that constitute access revenue sharing agreements under the Commission's rules. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part IV. Under the access stimulation rules, INS is reasonably considered a CLEC. *See* AT&T Legal Analysis III.B. AT&T denies the last sentence of paragraph 45 of the Answer for the reasons stated in paragraph 44, *supra*.

46. AT&T agrees that INS's legitimate CEA services to small, rural independent ILECs in Iowa are governed by different tariffs, and a different regulatory regime, than the access services provided in connection with traffic to CLECs, particularly CLECs engaged in access stimulation. *See* Compl. § II. AT&T's Complaint, however, is primarily directed at INS's decision to transport large volumes of CLEC access stimulation traffic, and then to charge unlawful and excessive tariff rates that apply only to legitimate CEA service. *Id.* §§ II-IV. AT&T denies that INS is not a CLEC under Part 51 of the Commission's rules or 47 C.F.R. §§ 61.3(bbb), 61.26. Compl. §§ III-IV. AT&T also denies that access stimulation "cannot work" for INS, because INS billed substantial access charges due to access stimulation, and did not appropriately reduce its rates on access

stimulation traffic. Compl. § II. INS thus experienced "a jump in revenues" and traffic, *Connect America Order* ¶ 656; *see* Compl. ¶ 40, without reducing its rates appropriately, thus making its rates improper under the analysis of the Commission and 10th Circuit. AT&T does not contend that the Commission's rules as to legitimate CEA are flawed, although INS improperly billed its CEA rates on legitimate CEA traffic and also manipulated its rates. Compl. §§ II, V.

47. AT&T denies that billing access stimulation traffic at INS's CEA rate is efficient or cost-effective. Compl. § II.A.2. Because access stimulation (i) is a "wasteful" arbitrage scheme that harms IXCs and consumers and (ii) should not be relied upon to expand service to rural areas, AT&T denies that either smaller IXCs or "rural competition" are helped by INS's unlawful conduct in transporting large volumes of CLEC access stimulation traffic. *Connect America Order* ¶¶ 662-66. INS's Answer effectively admits that billing its CEA rate on large volumes of access stimulation traffic creates implicit subsidies, but the Commission has already determined that such subsidies are improper. *Id.* ¶ 9 (an ICC system with "implicit subsidies" is outdated, inefficient, and "creates competitive distortions" because "hundreds of millions of Americans [are] paying more on their wireless and long distance bills than they should in the form of hidden, inefficient charges."). The billing of INS's CEA rate on access stimulation traffic is a type of inefficient charge that ordinary long distance and wireless customers are paying to subsidize INS and other entities engaged in access stimulation. *Id.* ¶ 663.

48. AT&T denies the allegations in Paragraph 48 of the Answer. Access stimulation schemes grew rapidly in Iowa, *see* Compl. ¶ 40. Further, although the amount of access stimulation that INS itself currently transports has declined somewhat from its peak in or around 2011 and 2012, *see id.*, access stimulation schemes continue to flourish in Iowa and elsewhere –

the decrease in the volumes handled by INS appears to be due to bypass of INS. *See* Answer ¶ 49 & n.17; Rhinehart Reply Decl.

49. AT&T's allegations in paragraph 49 of the Complaint concerned the initial implementation of access stimulation schemes in Iowa. Compl. ¶ 49. INS's Answer pertains to 2013, and is not responsive. Because INS did not address AT&T's allegation that access to INS's network was initially essential for access stimulation schemes to work in Iowa, the allegations in paragraph 49 of the Complaint should be deemed as admitted. AT&T admits that, in recent years, there appears to have been bypass of INS (some of the bypass may be occurring over INS facilities that it agreed to lease to access stimulation CLECs, see Rhinehart Reply Decl.). However, as explained in the Complaint, the rates charged by other entities to transport traffic to access stimulation CLECs (including by the CLECs themselves) have generally been inflated because INS's misconduct created a pricing umbrella. Compl. ¶ 85; AT&T Legal Analysis at 18.

50. AT&T denies that the Commission authorized INS to provide and bill for CEA service on access stimulation traffic to CLECs. *See* Compl. §§ I.A., II; AT&T Legal Analysis, Part I. When the Commission authorized INS to offer CEA service, there were no CLECs and no access stimulation traffic – to the contrary, INS was authorized because the participating ILECs could not offer equal access and had very low traffic volumes. *See* Compl. §§ I.A., II; AT&T Legal Analysis, Part I. AT&T also denies that any mandatory use requirement exists as to CLECs or access stimulation traffic, including the access stimulation traffic routed by INS on its CEA network. *See* AT&T Legal Analysis, Part I.C.4. AT&T denies that the "purpose" of INS's traffic agreements with access stimulation is relevant, and regardless, the undeniable effect of those agreements was that INS carried enormous volumes of access stimulation traffic (which INS plainly knew and identified in its tariff filings), which it then improperly billed using its tariffed

rate for CEA service. Compl. §§ I-II. Further, INS has not produced its other traffic agreements with other LECs, and thus AT&T cannot admit or deny whether those agreements have similar terms as INS's traffic agreements with access stimulating LECs. However, the issue is not relevant because the access stimulation CLECs have far different traffic patterns and volumes than other LECs connected to INS. Compl. § II. As to INS's allegations as to the volume of access stimulation traffic transported by INS, AT&T incorporates paragraphs 48 and 49, *supra*. AT&T admits that INS's revenue requirement has declined somewhat between 2011 and 2015, *see* Compl. ¶ 40; however, because INS's tariffed CEA rates cannot be properly applied to CLEC access stimulation traffic, INS's revenue and/or charges to AT&T are improper and inflated in all years. *Id.* § II. AT&T also denies that INS's CEA rate could be increased "substantially," because that rate is capped under the Commission's rate cap and rate parity rules. Compl. § III.

51. INS's assertions about the terms and purpose of its traffic agreement with Great Lakes are irrelevant, and the agreement speaks for itself. AT&T denies that INS's traffic agreement with Great Lakes does not constitute an access revenue sharing agreement under the Commission's rules. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; Reply Legal Analysis, Part IV. Under INS's traffic agreements with access stimulation CLECs, INS provides services to the CLECs (including switching and transmission) at no charge, and thus those agreements constitute revenue sharing agreements. *See* AT&T Legal Analysis, Part III.A; AT&T Reply Legal Analysis, Part III. Further, INS has not produced its other traffic agreements with other LECs, and thus AT&T cannot admit or deny whether those agreements have similar terms as INS's traffic agreements with access stimulating LECs. However, the issue is not relevant because the access stimulation CLECs have far different traffic patterns and volumes than other LECs connected to INS. Compl. § II. AT&T also denies that any mandatory use requirement exists as to CLECs or

access stimulation traffic, including the access stimulation traffic routed by INS on its CEA network. AT&T Legal Analysis, Part I.C.4.

52. AT&T denies that INS's traffic agreement with the stated entities do not constitute access revenue sharing agreements under the Commission's rules. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part IV. AT&T further denies that INS has not engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part III. INS has agreements with access stimulating CLECs that constitute access revenue sharing agreements under the Commission's rules. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part IV. AT&T also denies that any mandatory use requirement exists as to CLECs or access stimulation traffic, including the access stimulation traffic routed by INS on its CEA network. AT&T Legal Analysis, Part I.C.4.

53. AT&T denies the allegations in Paragraph 53 of the Answer. INS has agreements with access stimulating CLECs that constitute access revenue sharing agreements under the Commission's rules. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part IV. Further, as AT&T explained, there is no basis in law or fact to conclude that any mandatory use policy has been applied to access stimulation traffic to CLECs. *See, e.g.*, AT&T Legal Analysis, Part I.C.4; Habiak Decl. ¶¶ 29-32. INS cannot properly rely on legal determinations that involve only legitimate CEA traffic and that pre-date the Telecommunications Act of 1996, the advent of local competition via competitive LECs, and the growth of arbitrage schemes such as access stimulation. AT&T Legal Analysis, Part I.C.4. AT&T denies INS's allegations regarding supposed decreases in access stimulation traffic in paragraphs 48-49, *supra*. Regarding INS's claims about Section 69.112(i), see *supra* paragraph 13.

54. AT&T denies that INS's classification as a CEA provider excludes INS from the Commission's rate cap and rate parity rules. See Compl. § III; AT&T Legal Analysis, Part II; Reply Legal Analysis Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; Reply Legal Analysis Part II. AT&T further denies that INS has not engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part III. INS has agreements with access stimulating CLECs that constitute access revenue sharing agreements under the Commission's rules. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part IV.

55. AT&T admits that INS continues to be classified as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)) and a CEA service provider, but AT&T denies that either of these classifications excludes INS from the Commission's rate cap and rate parity rules. See Compl. § III; AT&T Legal Analysis, Part II; Reply Legal Analysis Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; Reply Legal Analysis Part II. AT&T denies INS's claims about the "purpose" of the rate cap rules, for the reasons stated in its Reply Legal Analysis, Part II.

56. AT&T admits that INS continues to be classified as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)), but AT&T denies that this classification excludes INS from the Commission's rate cap and rate parity rules. See Compl. § III; AT&T Legal Analysis, Part II; Reply Legal Analysis Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis,

Part II; Reply Legal Analysis Part II. AT&T denies INS's allegations regarding its traffic and cost studies, for the reasons explained in AT&T's Legal Analysis, Parts II-IV.

57. AT&T admits that INS continues to be classified as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)) and a CEA service provider, but AT&T denies that either of these classifications excludes INS from the Commission's rate cap and rate parity rules. See Compl. § III; AT&T Legal Analysis, Part II; Reply Legal Analysis Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; Reply Legal Analysis Part II. . AT&T denies INS's allegations regarding its traffic and cost studies, for the reasons explained in AT&T's Legal Analysis, Parts II-IV.

58. AT&T denies that the Commission's rate cap and rate parity rules do not apply to INS. See Compl. § III; AT&T Legal Analysis, Part II; Reply Legal Analysis Part II. The rules apply to any LECs and all switched access services, and because INS has admitted that it is a LEC (see Answer ¶ 92) and provides "interstate or intrastate exchange access," those rules apply to INS. *See* Compl. § III; AT&T Legal Analysis, Part II; Reply Legal Analysis Part II.

59. AT&T denies that INS's classification as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)) excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; Reply Legal Analysis Part II. INS is a LEC pursuant to its own admission (*see* Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; Reply Legal Analysis Part II. AT&T denies that INS's CEA tariff rates were properly billed to AT&T on access stimulation traffic. Compl. §§ I-II. AT&T denies that it paid a zero rate for "CEA traffic," and AT&T paid, based on estimates, a rate for legitimate CEA traffic after applying the rate cap and rate parity rules.

Habiak Decl. ¶¶ 43-52. AT&T has withheld payment of tariffed CEA charges that INS billed for CLEC access stimulation traffic, because INS has no tariff applicable to such service, and INS may not collect its tariffed rates in those circumstances. Compl. §§ I-II; AT&T Legal Analysis, Part I. AT&T denies that it withheld improperly under the tariff, the Commission's rules, or the Act. Compl. ¶ 59 & n.62; *see also Sprint Commc'ns Co. v. Northern Valley Commc'ns*, 26 FCC Rcd. 10780, ¶ 14 (2011) (a tariff provision that requires all disputed charges to be paid 'in full prior to or at the time of submitting a good faith dispute' is unreasonable").

60. AT&T's allegations in paragraph 60 should be deemed admitted.

61. AT&T's allegations in paragraph 61 should be deemed admitted.

62. AT&T denies that CEA service is defined in the tariff. The tariff contains no definition for the term "Centralized Equal Access Service," and therefore to interpret that term one must look to the Commission's decisions initially approving the provision of CEA service. *See* AT&T Legal Analysis, Part I.A at 6. AT&T also denies that INS's approval to carry "terminating traffic" includes the ability to carry access stimulation traffic; INS's authorization to carry and charge for "terminating" traffic extends only to legitimate CEA traffic within the scope of its tariff, not access stimulation. AT&T Reply Legal Analysis, Part I.A.3&4. Paragraph 62 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

63. AT&T denies that CEA service is defined in the tariff. The tariff contains no definition for the term "Centralized Equal Access Service," and therefore to interpret that term one must look to the Commission's decisions initially approving the provision of CEA service. *See* AT&T Legal Analysis, Part I.A at 6. AT&T denies that Section 6.1 of INS's tariff, titled "General" and appearing in a Section labeled "Switched Access Service," defines CEA service or the scope

of INS's tariff. Section 6.1 only describes the functions that INS will perform with respect to traffic that falls within the scope of the tariff, and those functions, which are performed on other traffic (such as intrastate traffic), do not define the scope of CEA service. AT&T Reply Legal Analysis, Part I.A.1. Paragraph 63 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

64. AT&T admits that a CEA network can be used for purposes other than the equal access function, which exclusively concerns originating functions, but denies that any such purposes were key reasons for approval of INS and other CEA providers. *See* Compl. ¶¶ 31-36; AT&T Legal Analysis, Part I.A.1, at 7-9. AT&T further denies that access stimulation is included within CEA service as described by the Commission in its approval orders, or that access stimulation was one of the purposes for which INS or other CEA providers were approved. *See* Compl. ¶¶ 31-36, 62-80; AT&T Legal Analysis, Part I.A at 6-14; AT&T Reply Legal Analysis, Part I. AT&T denies that its arguments would preclude INS from terminating legitimate CEA traffic, for either AT&T or other IXCs, and providing the claimed benefits; AT&T's argument concerns only access stimulation traffic. AT&T Reply Legal Analysis, Part I. AT&T denies that INS's CEA rates will go up if INS is not allowed to impose its CEA rates on access stimulation traffic for several reasons. INS has not substantiated any such claim, Commission policy bars using access stimulation, a "wasteful" practice that harms consumers, to subsidize other services, other CEA providers that stopped carrying access stimulation traffic did not increase their rates after the access stimulation traffic was removed and AT&T has demonstrated that the cost studies and ratemaking methodologies used to support INS's current rates contain significant flaws that, if corrected, could mean that rates would not rise much even if access stimulation traffic is excluded.

*See* AT&T Legal Analysis, Part IV.A; AT&T Reply Legal Analysis, Part I.B.3. AT&T also denies that terminating traffic is of equal concern as originating traffic with respect to CEA arrangements, and that the Commission is not concerned with ensuring that termination of calls can be done cost effectively for all carriers, including AT&T. AT&T Reply Legal Analysis, Part I.A, n.4, Part I.B.2. AT&T denies that access stimulation traffic should be included as CEA because it enables the accurate measurement of terminating traffic, particularly for CLECs engaged in access stimulation that have advanced switches, an argument completely unsubstantiated in the evidence. AT&T denies that access stimulation traffic is critical to maintaining CEA service. *See* AT&T Reply Legal Analysis, Part I.B.3. AT&T is without knowledge sufficient to form a belief regarding its percentage of CEA traffic. Paragraph 64 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

65. AT&T denies that access stimulation is encompassed within CEA traffic or the mandatory use requirement. *See* AT&T Legal Analysis, Part I.A.2; AT&T Reply Legal Analysis, Part I. AT&T denies that its arguments would preclude INS from terminating legitimate CEA traffic, for either AT&T or other IXCs, and providing the claimed benefits; AT&T's argument concerns only access stimulation traffic. AT&T Reply Legal Analysis, Part I. AT&T denies that Section 6.1 of INS's tariff, titled "General" and appearing in a Section labeled "Switched Access Service," defines CEA service or the scope of INS's tariff. Section 6.1 only describes the functions that INS will perform with respect to traffic that falls within the scope of the tariff, and those functions, which are performed on other traffic (such as intrastate traffic), do not define the scope of CEA service. AT&T Reply Legal Analysis, Part I.A.1. AT&T denies that competition among long distance carriers regarding termination of calls has ever existed, would be practical, or even

possible, or would serve any purpose. INS offers no evidence of any "competition" among long distance carriers to terminate calls; at most it offers the conclusory conjecture of its witness, Mr. Hilton. Moreover, the Iowa Utilities Board found that INS does not perform any aggregation or concentration function for terminating calls they way it does for originating calls. *See* AT&T Reply Legal Analysis, Part I.B.2. AT&T denies that INS's CEA rates will go up if INS is not allowed to impose its CEA rates on access stimulation traffic for several reasons. INS has not substantiated any such claim, Commission policy bars using access stimulation, a "wasteful" practice that harms consumers, to subsidize other services, other CEA providers that stopped carrying access stimulation traffic did not increase their rates after the access stimulation traffic was removed and AT&T has demonstrated that the cost studies and ratemaking methodologies used to support INS's current rates contain significant flaws that, if corrected, could mean that rates would not rise much even if access stimulation traffic is excluded. *See* AT&T Legal Analysis, Part IV.A; AT&T Reply Legal Analysis Part I.B.3. AT&T denies that references to terminating "all" traffic or Section 61.38 of the Commission's rules expand the scope of INS's tariff beyond the description of CEA services in the relevant Commission approval Orders. AT&T Reply Legal Analysis, Part I.A.3&4. AT&T is without knowledge sufficient to form a belief regarding its percentage of CEA traffic. Paragraph 65 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

66. AT&T denies that access stimulation is encompassed within CEA traffic. *See* AT&T Legal Analysis, Part I.A.2. Therefore, the absence of any "exclusion" of access stimulation from the definition of CEA service is irrelevant. *See* AT&T Reply Legal Analysis Part I.A. AT&T denies that references to terminating "all" traffic expand the scope of INS's tariff beyond the

description of CEA services in the relevant Commission approval Orders. Reply Legal Analysis, Part I.A.3&4. AT&T denies that competition among long distance carriers regarding termination of calls has ever existed, would be practical, or even possible, or would serve any purpose. INS offers no evidence of any "competition" among long distance carriers to terminate calls; at most it offers the conclusory conjecture of its witness, Mr. Hilton. Moreover, the Iowa Utilities Board found that INS does not perform any aggregation or concentration function for terminating calls they way it does for originating calls. AT&T Reply Legal Analysis, Part I.B.2. AT&T denies that INS's CEA rates will go up if INS is not allowed to impose its CEA rates on access stimulation traffic for several reasons. INS has not substantiated any such claim, Commission policy bars using access stimulation, a "wasteful" practice that harms consumers, to subsidize other services, other CEA providers that stopped carrying access stimulation traffic did not increase their rates after the access stimulation traffic was removed and AT&T has demonstrated that the cost studies and ratemaking methodologies used to support INS's current rates contain significant flaws that, if corrected, could mean that rates would not rise much even if access stimulation traffic is excluded. *See* AT&T Legal Analysis, Part IV.A; AT&T Reply Legal Analysis, Part I.B.3. AT&T denies that Section 6.1 of INS's tariff, titled "General" and appearing in a Section labeled "Switched Access Service," defines CEA service or the scope of INS's tariff. Section 6.1 only describes the functions that INS will perform with respect to traffic that falls within the scope of the tariff, and those functions, which are performed on other traffic (such as intrastate traffic), do not define the scope of CEA service. AT&T Reply Legal Analysis, Part I.A.1. AT&T denies that CEA service is defined in the tariff. The tariff contains no definition for the term "Centralized Equal Access," and therefore to interpret that term one must look to the Commission's decisions initially approving the provision of CEA service. *See* AT&T Legal Analysis, Part I.A at 6; AT&T Reply Legal

Analysis, Part I.A. AT&T denies that it was reasonable for INS to improperly bill AT&T for access stimulation traffic. *See* AT&T Legal Analysis, Part A.3 at 13-14. Paragraph 66 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

67. AT&T denies that access stimulation is encompassed within CEA traffic. *See* AT&T Legal Analysis, Part I.A.2; AT&T Reply Legal Analysis, Part I.A. Paragraph 67 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

68. AT&T admits that a CEA network can be used for purposes other than the equal access function, which exclusively concerns originating functions, but denies that any such purposes were the reason INS and other CEA providers were approved. *See* Compl. ¶¶ 31-36; AT&T Legal Analysis, Part I.A.1, at 7-9; AT&T Reply Legal Analysis, Part I.A; *supra* ¶¶ 33, 64. AT&T further denies that access stimulation is included within CEA service as described by the Commission in its approval orders, or that access stimulation was one of the purposes for which INS or other CEA providers were approved. *See* Compl. ¶¶ 31-36, 62-80; AT&T Legal Analysis, Part I.A at 6-14. Paragraph 68 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

69. AT&T admits that a CEA network can be used for purposes other than the equal access function, which exclusively concerns originating functions, but denies that any such purposes were key reasons for approval of INS and other CEA providers. *See* Compl. ¶¶ 31-36; AT&T Legal Analysis, Part I.A.1, at 7-9; AT&T Reply Legal Analysis, Part I. AT&T further denies that access stimulation is included within CEA service as described by the Commission in

its approval orders, or that access stimulation was one of the purposes for which INS or other CEA providers were approved. *See* Compl. ¶¶ 31-36, 62-80; AT&T Legal Analysis, Part I.A at 6-14; AT&T Reply Legal Analysis, Part I. AT&T denies that INS's Section 214 proceeding authorizes it to terminate any type of traffic under a CEA tariff and denies that access stimulation is encompassed within CEA traffic or the mandatory use requirement. *See* AT&T Legal Analysis, Part I.A.2; AT&T Reply Legal Analysis, Part I.A, I.B.5. AT&T further denies that access stimulation is included within CEA services as described by the Iowa Utilities Board in its orders. *See* AT&T Legal Analysis, Part I.A.1 at 8, n.8. Paragraph 69 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

70. While AT&T admits that CEA arrangements impose fees on IXCs in connection with the origination, and sometimes also termination, of legitimate CEA traffic, AT&T denies that the needs of customers, both traditional and chat and conference companies, are irrelevant to this dispute. Compl. ¶ 70 (conference and chat companies do not need the equal access function). . AT&T denies that the alleged fact that INS's minutes have declined since 2012 is relevant to the issues here. While INS's minutes in 2015 were down from the extraordinarily high levels seen in recent years, they were still more than 1.2 billion minutes higher than in 2005, when INS began carrying access stimulation traffic. *See* Compl. ¶ 40. Growth in revenue since 2005 has also been significant and even if revenue in 2015 is down from the extraordinarily high levels seen in recent years, they were still more than $10 million more than in 2005, when INS began carrying access stimulation traffic. *See* Compl. ¶ 40. Paragraph 70 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

71. AT&T denies that decisions related to CEA service outside of Iowa are irrelevant to a dispute about CEA service. *See, e.g.,* AT&T Legal Analysis, Part I.C.4 at 25-26. AT&T denies that the inclusion of terminating access stimulation traffic is an essential element of CEA. *See* AT&T Legal Analysis, Part I.A.1. Paragraph 71 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

72. AT&T denies that the nature, functions, and benefits of CEA service are the same for all other types of terminating traffic, as access stimulation has been found to be "wasteful arbitrage" that needs to be "curtailed." Compl. ¶¶ 15, 43. AT&T denies that CEA service is defined in the tariff. The tariff contains no definition for the term "Centralized Equal Access Service," and therefore to interpret that term one must look to the Commission's decisions initially approving the provision of CEA service. *See* AT&T Legal Analysis, Part I.A at 6. AT&T further denies that access stimulation is included within CEA services as described by the Iowa Utilities Board in its orders. *See* AT&T Legal Analysis, Part I.A.1 at 8, n.8. AT&T acknowledges that the Iowa Utilities Board's approval of the mix of intrastate and interstate traffic satisfied the Commission's condition regarding the same issue at the time of approval, but AT&T's argument is that such mix had now changed on account of INS's decision to carry massive volumes of access stimulation traffic, and therefore that condition is no longer met. Compl. ¶¶ 72-73. Paragraph 72 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

73. AT&T denies that the nature, functions, and benefits of CEA service are the same for access stimulation as they are for legitimate CEA traffic, as access stimulation has been found to be "wasteful arbitrage" that needs to be "curtailed." Compl. ¶¶ 15, 43; AT&T Reply Legal

Analysis, Part I.A.2&3, I.B. AT&T acknowledges that the Iowa Utilities Board's approval of the mix of intrastate and interstate traffic satisfied the Commission's condition regarding the same issue at the time of approval, but AT&T's argument is that such mix had now changed on account of INS's decision to carry massive volumes of access stimulation traffic, and therefore that condition is no longer met. Compl. ¶¶ 72-73.

74. AT&T denies that the 2017 tariff filing fails to demonstrate that CEA service for access stimulation terminating traffic is not like CEA service for other types of terminating traffic. *See* AT&T Legal Analysis, Part I.A.3. AT&T further states that although the contract tariff provision did not go into effect, INS did not deny that the language in that filing about the contract tariff service being "not like" its tariff CEA service was accurate. AT&T further denies that access stimulation is included within CEA service as described by the Commission in its approval orders, or that access stimulation was one of the purposes for which INS or other CEA providers were approved. *See* Compl. ¶¶ 31-36, 62-80; AT&T Legal Analysis, Part I.A at 6-14; AT&T Reply Legal Analysis, Part I. AT&T denies that the "functions, nature and benefits" of CEA service are the same for access stimulation traffic are the same for access stimulation as they are for legitimate CEA traffic. *See* Compl. ¶¶ 67-75. Paragraph 74 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

75. AT&T denies that it was properly billed for access stimulation terminating traffic under a CEA tariff. *See* AT&T Legal Analysis, Part I.A.3 at 13-14; AT&T Reply Legal Analysis, Part I.A. AT&T denies that the "switching and transport functions" described in INS's CEA tariff describe the scope of that tariff. AT&T denies that CEA service is defined in the tariff. The tariff contains no definition for the term "Centralized Equal Access," and therefore to interpret that term

one must look to the Commission's decisions initially approving the provision of CEA service. *See* AT&T Legal Analysis, Part I.A at 6. Paragraph 75 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

76. AT&T denies that decisions related to CEA service outside of Iowa are irrelevant to a dispute about CEA service. *See, e.g.*, AT&T Legal Analysis, Part I.C.4 at 25-26. AT&T denies that access stimulation is encompassed within CEA traffic or the mandatory use requirement. *See* AT&T Legal Analysis, Part I.A.2; AT&T Reply Legal Analysis, Part I.A, I.B.5. Therefore, the absence of any "exclusion" of access stimulation from the mandatory use requirement or definition of CEA service is irrelevant; what is relevant is the absence of any "inclusion" of access stimulation in CEA traffic after access stimulation emerged in Iowa. *See* AT&T Reply Legal Analysis, Part I.A.3&4. AT&T denies that INS's CEA rates will go up if INS is not allowed to impose its CEA rates on access stimulation traffic. INS has not substantiated any such claim. Commission policy bars using access stimulation, a "wasteful" practice that harms consumers, to subsidize other services, other CEA providers that stopped carrying access stimulation traffic did not increase their rates after the access stimulation traffic was removed and AT&T has demonstrated that the cost studies and ratemaking methodologies used to support INS's current rates contain significant flaws that, if corrected, could mean that rates would not rise much even if access stimulation traffic is excluded. *See* AT&T Legal Analysis, Part IV.A; AT&T Reply Legal Analysis, Part I.B.3. AT&T also denies that its position here, if adopted, would remove all AT&T traffic (or all traffic from any other IXC) from INS's CEA network; AT&T's position is directed at access stimulation traffic. Paragraph 76 of the Answer does not contain any other

factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

77. AT&T denies that INS's CEA rates will go up if INS is not allowed to impose its CEA rates on access stimulation traffic. INS has not substantiated any such claim. Commission policy bars using access stimulation, a "wasteful" practice that harms consumers, to subsidize other services, other CEA providers that stopped carrying access stimulation traffic did not increase their rates after the access stimulation traffic was removed and AT&T has demonstrated that the cost studies and ratemaking methodologies used to support INS's current rates contain significant flaws that, if corrected, could mean that rates would not rise much even if access stimulation traffic is excluded. *See* AT&T Legal Analysis, Part IV.A; AT&T Reply Legal Analysis, Part I.B.3. AT&T also denies that its position here, if adopted, would remove all AT&T traffic (or all traffic from any other IXC) from INS's CEA network; AT&T's position is directed at access stimulation traffic. AT&T Reply Legal Analysis, Part I. AT&T also denies that allowing AT&T and other IXCs to establish direct connections with access stimulating CLECs would harm "smaller IXCs" or "eliminate" long distance competition in Iowa. INS has not substantiated such claim, particularly in light of the experience of other CEA states that in which the CEA provider does not impose its tariffed CEA rates on access stimulation traffic. AT&T Reply Legal Analysis, Part I.B.3. Paragraph 77 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

78. AT&T denies that its proposal to limit traffic on the CEA network to CEA traffic is unreasonable, anti-competitive, or discriminatory because access stimulation traffic is not encompassed within CEA traffic, and eliminating INS's billing of CEA rates on access stimulation traffic would apply, and thus benefit, all IXCs who deliver calls to INS, not just AT&T, thereby

eliminating any chance of "discrimination" or a "preferential rate" for AT&T. *See* AT&T Legal Analysis, Part I.A.2; AT&T Reply Legal Analysis, Part I.A.; *supra* ¶¶ 36, 65, 77. AT&T also denies that its position here, if adopted, would remove all AT&T traffic (or all traffic from any other IXC) from INS's CEA network; AT&T's position is directed at access stimulation traffic. AT&T Reply Legal Analysis, Part I. AT&T denies that INS's CEA rates will go up if INS is not allowed to impose its CEA rates on access stimulation traffic. INS has not substantiated any such claim. Commission policy bars using access stimulation, a "wasteful" practice that harms consumers, to subsidize other services, other CEA providers that stopped carrying access stimulation traffic did not increase their rates after the access stimulation traffic was removed and AT&T has demonstrated that the cost studies and ratemaking methodologies used to support INS's current rates contain significant flaws that, if corrected, could mean that rates would not rise much even if access stimulation traffic is excluded. *See* AT&T Legal Analysis, Part IV.A; AT&T Reply Legal Analysis, Part I.B.3. Paragraph 78 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

79. AT&T denies that its proposal is unreasonable, anti-competitive, or discriminatory, or that it would lead to the destruction of competition because access stimulation traffic is not encompassed within CEA traffic. *See* AT&T Legal Analysis, Part I.A.2; AT&T Reply Legal Analysis, Part I.A; *supra* ¶ 78. Also, AT&T denies that its position here, if adopted, would eliminate all of AT&T's traffic (or all traffic of any other IXC) from the INS CEA network; AT&T's position is directed at access stimulation traffic. AT&T Reply Legal Analysis, Part I.

80. AT&T denies that its proposal is unreasonable, anti-competitive, or discriminatory, or that it would lead to the destruction of competition because access stimulation traffic is not

encompassed within CEA traffic. *See* AT&T Legal Analysis, Part I.A.2; AT&T Reply Legal Analysis, Part I.A; Part I.B.3; *supra* ¶ 77. For the same reasons, AT&T denies that "redundant access tandems, signaling systems and databases and a fiber network spanning more than 2,700 miles to hundreds of local exchanges" are necessary or useful in terminating massive volumes of access stimulation traffic to a handful of access stimulation CLECs in Iowa. *See* Compl. ¶¶ 67-75; AT&T Reply Legal Analysis, Part I.A, I.B.3. Therefore, AT&T denies that treating access stimulation differently than legitimate CEA traffic is not proper or appropriate.

81. AT&T denies that access stimulation is encompassed within CEA traffic or the mandatory use requirement. *See* AT&T Legal Analysis, Part I.A.2; AT&T Reply Legal Analysis Part I.B.3. AT&T also denies that the agreements between INS and access stimulation CLECs are not anti-competitive. *See* AT&T Legal Analysis, Part III. AT&T also denies that the Iowa Utilities Board approval orders support its position. Aside from not approving, or even addressing, application of CEA rates to access stimulation traffic because access stimulation had not yet emerged, those orders recognized that "the term 'equal access,' which in this context is associated with Feature Group D service, is nearly meaningless when applied to terminating access services." INS Reconsideration Order at 4 (INS Ex. 29). Further, the quotes upon which INS relies were from a discussion regarding use of Feature Group A and B services, *id.*, and thus are irrelevant to the Feature Group D service at issue here. Also, although the Iowa Utilities Board allowed INS to impose a single CEA rate on both originating and terminating traffic, it did not allow INS to impose upon IXCs the costs of terminating service, save for the ticketing and recording functions. AT&T Reply Legal Analysis, Part I.B.2. In addition, while INS cites the Iowa Supreme Court's approval of its exclusive arrangements with ITCs, which did not include any agreements with access stimulating CLECs because they did not then exist, the Iowa Supreme Court stated that exclusive

agreements were not anticompetitive if they did "not exceed a reasonable period of time," and stressed that the subject agreements were appropriate only because they were "for five years each; we do not consider this to be for an unreasonable period." *N.W. Bell Tel. Co.* v. *I.U.B.*, 477 N.W.2d 678, 686 (Iowa 1991). INS is now attempting to enforce such agreements for nearly 30 years, and its agreements with CLECs like Great Lakes for more than 12. Thus, even if they were applicable to access stimulation traffic (and they are not), AT&T denies that any of INS's exclusive traffic agreements are still enforceable.

82. AT&T denies that decisions related to CEA service outside of Iowa are irrelevant to a dispute about CEA service. *See, e.g.,* AT&T Legal Analysis, Part I.C.4 at 25-26; AT&T Reply Legal Analysis, Part I.A. AT&T denies that access stimulation is encompassed within CEA traffic or the mandatory use requirement. *See* AT&T Legal Analysis, Part I.A.2; AT&T Reply Legal Analysis Part I.A, I.B.5. AT&T denies that INS's CEA rates will go up if INS is not allowed to impose its CEA rates on access stimulation traffic. INS has not substantiated any such claim. Commission policy bars using access stimulation, a "wasteful" practice that harms consumers, to subsidize other services, other CEA providers that stopped carrying access stimulation traffic did not increase their rates after the access stimulation traffic was removed and AT&T has demonstrated that the cost studies and ratemaking methodologies used to support INS's current rates contain significant flaws that, if corrected, could mean that rates would not rise much even if access stimulation traffic is excluded. *See* AT&T Legal Analysis, Part IV.A; AT&T Reply Legal Analysis, Part I.B.3. Paragraph 82 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

83. AT&T denies that access stimulation is encompassed within CEA traffic or the mandatory use requirement. *See* AT&T Legal Analysis, Part I.A.2. Therefore, the absence of any "exclusion" of access stimulation from the mandatory use requirement or definition of CEA service is irrelevant; what is relevant is the absence of any *inclusion* of access stimulation traffic within CEA service after access stimulation emerged. *See* AT&T Reply Legal Analysis, Part I.A.3-4. AT&T denies that its proposal is unreasonable, anti-competitive, or discriminatory, or that it will lead to the destruction of competition because access stimulation traffic is not encompassed within CEA traffic. *See* AT&T Legal Analysis, Part I.A.2, I.B.3; *supra* ¶¶ 77-81. AT&T also denies that the Iowa Supreme Court's approval of INS's exclusive arrangements with its ITCs for legitimate CEA traffic extends to CLECs and access stimulation traffic, and, even if it did, further denies that such exclusivity agreements would still be enforceable because they have extended for an unreasonable period of time. *See supra* ¶ 82. Paragraph 83 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

84. AT&T denies that it engaged in "bullying tactics" or otherwise improperly dealt with any LECs directly. Under the Commission's rules, AT&T is entitled to seek direct connections from LECs engaged in access stimulation. AT&T Reply Legal Analysis, at 1-4, Part I. AT&T denies that access stimulation is encompassed within CEA traffic or the mandatory use requirement. *See* AT&T Legal Analysis, Part I.A.2; AT&T Reply Legal Analysis, Part I.A, I.B.5. AT&T denies that INS's CEA rates will go up if INS is not allowed to impose its CEA rates on access stimulation traffic. INS has not substantiated any such claim. Commission policy bars using access stimulation, a "wasteful" practice that harms consumers, to subsidize other services, other CEA providers that stopped carrying access stimulation traffic did not increase their rates after the

access stimulation traffic was removed and AT&T has demonstrated that the cost studies and ratemaking methodologies used to support INS's current rates contain significant flaws that, if corrected, could mean that rates would not rise much even if access stimulation traffic is excluded. *See* AT&T Legal Analysis, Part IV.A; AT&T Reply Legal Analysis, Part I.B.3. Paragraph 84 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

85. AT&T denies that access stimulation is encompassed within CEA traffic or the mandatory use requirement. *See* AT&T Legal Analysis, Part I.A.2; AT&T Reply Legal Analysis Part I.A, I.B.5. Also, AT&T denies that its position here, if adopted, would eliminate all of AT&T's traffic (or all traffic of any other IXC) from the INS CEA network; AT&T's position is directed at access stimulation traffic. AT&T Reply Legal Analysis, Part I. Further in that regard, AT&T's position would eliminate the need for any IXCs to pay CEA rates on access stimulation traffic, thereby benefiting all IXCs equally, and precluding any finding of discrimination in favor of AT&T. AT&T Reply Legal Analysis, Part I. AT&T denies that INS's CEA rates will go up if INS is not allowed to impose its CEA rates on access stimulation traffic. INS has not substantiated any such claim. Commission policy bars using access stimulation, a "wasteful" practice that harms consumers, to subsidize other services, other CEA providers that stopped carrying access stimulation traffic did not increase their rates after the access stimulation traffic was removed and AT&T has demonstrated that the cost studies and ratemaking methodologies used to support INS's current rates contain significant flaws that, if corrected, could mean that rates would not rise much even if access stimulation traffic is excluded. *See* AT&T Legal Analysis, Part IV.A; AT&T Reply Legal Analysis, Part I.B.3. AT&T also denies that Section 61.38 of the Commission's rules, which nowhere mentions CEA service, requires inclusion of CEA traffic in INS's rate setting. AT&T

Reply Legal Analysis, Part I.A.4. Paragraph 85 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

86. AT&T denies that INS properly billed the CEA tariff rates, as to CLEC access stimulation traffic. *See* Compl. §§ I-II. AT&T denies that the Commission's rate cap and rate parity rules do not apply to INS. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. The rules apply to any LECs and all switched access services, and because INS has admitted that it is a LEC (*see* Answer ¶ 92) and provides "interstate or intrastate exchange access," those rules apply to INS. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II.

87. AT&T denies that the Commission's rate cap and rate parity rules do not apply to INS. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. The rules apply to any LECs and all switched access services, and because INS has admitted that it is a LEC (*see* Answer ¶ 92) and provides "interstate or intrastate exchange access," those rules apply to INS. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II.

88. AT&T admits that INS continues to be classified as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)) that provides CEA service, but AT&T denies that this classification excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II.

89. AT&T admits that INS continues to be classified as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)), but AT&T denies that this classification

excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. AT&T further denies that INS properly calculated its tariffed rates, *see* Compl. §§ III-V; AT&T Reply Legal Analysis, Part II-IV.

90. AT&T denies that INS's classification as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)) that provides CEA service excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. AT&T denies that INS is not a CLEC. Under the access stimulation rules, INS is reasonably considered a CLEC. AT&T Legal Analysis, Part III.B. In any event, even if INS were considered a "rate-of-return" local exchange carrier under the access stimulation rules, INS would need to refile and reduce its rates because its costs and demand were not reflected in INS's tariff filing; rather, INS has manipulated its CEA rates. *See* Compl. § V; AT&T Legal Analysis, Part IV; AT&T Reply Legal Analysis, Part IV. AT&T further denies that INS properly calculated its tariffed rates. *See* Compl. §§ III-V; AT&T Reply Legal Analysis, Parts II-IV.

91. AT&T denies that INS's classification as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)) excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject

to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. AT&T further denies that INS properly calculated its tariffed rates, *see* Compl. §§ III-V; AT&T Reply Legal Analysis, Parts II-IV.

92. AT&T denies that INS's classification as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)) that provides CEA service excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. AT&T denies that INS is not a CLEC. Under the access stimulation rules, INS is reasonably considered a CLEC. AT&T Legal Analysis, Part III.B. In any event, even if INS were considered a "rate-of-return" local exchange carrier under the access stimulation rules, INS would need to refile and reduce its rates because its costs and demand were not reflected in INS's tariff filing; rather, INS has manipulated its CEA rates. *See* Compl. § V; AT&T Legal Analysis, Part IV; A&T Reply Legal Analysis, Part IV. AT&T further denies that INS properly calculated its tariffed rates, *see* Compl. §§ III-V; AT&T Reply Legal Analysis, Parts II-IV.

93. AT&T denies that INS's classification as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)) excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. AT&T further denies that INS properly calculated its tariffed rates, *see* Compl. §§ III-V; AT&T Reply Legal Analysis, Part II-IV.

94. AT&T denies that INS's classification as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)) excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. AT&T further denies that INS properly calculated its tariffed rates, *see* Compl. §§ III-V; AT&T Reply Legal Analysis, Parts II-IV.

95. AT&T denies the allegations in paragraph 95. INS has pointed to no "modern information services" that it provides on the traffic in dispute. While INS's legitimate CEA services were intended to provide "traffic concentration" and efficiencies, there is no need to provide "traffic concentration" on access stimulation traffic, which entails large volumes of traffic being terminated to the terminating CLEC engaged in access stimulation; as AT&T explained, the appropriate price for transporting such large volumes is far lower than INS's CEA rate, *see* Compl. § II.A.2. Further, as to the access stimulation traffic that makes up most of INS's switched access service, such traffic does not "foster competition" but rather forces ordinary customers to pay implicit subsidies and injures competition, *see Connect America Order*, ¶¶ 662-66.

96. AT&T denies that INS's classification as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)) excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis,

Part II. AT&T further denies that INS properly calculated its tariffed rates, *see* Compl. §§ III-V; AT&T Reply Legal Analysis, Parts II-IV.

97. AT&T denies that INS's classification as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)) excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. AT&T further denies that AT&T denies that INS's tariffs are "deemed lawful." AT&T Legal Analysis, Part II.B.

98. AT&T denies that the Commission's rate cap and rate parity rules do not apply to INS. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. The rules apply to any LECs and all switched access services, and because INS has admitted that it is a LEC (*see* Answer ¶ 92) and provides "interstate or intrastate exchange access," those rules apply to INS. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II.

99. AT&T denies that INS's classification as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)) that provides CEA service excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II.

100. AT&T denies that the Commission's rate cap and rate parity rules do not apply to INS. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. The rules apply to any LECs and all switched access services, and because INS has admitted that it is

a LEC (see Answer ¶ 92) and provides "interstate or intrastate exchange access," those rules apply to INS. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II.

101. AT&T denies that INS's classification as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)) that provides CEA service excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. AT&T disagrees that "Section 51.905(c) mandates changes to CEA tariff rates only when required by Section 61.38;" Subpart J applies notwithstanding other provisions of the Commission's rules. *See* AT&T Reply Legal Analysis, Part II.

102. AT&T denies that INS has not engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part III. INS has agreements with access stimulating CLECs that constitute access revenue sharing agreements under the Commission's rules. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part IV.

AT&T denies that INS is not required to reduce its rates because INS has engaged in access stimulation. AT&T Legal Analysis, Part III.B. Under the access stimulation rules, INS is reasonably considered a CLEC. *Id.* In any event, even if INS were considered a "rate-of-return" local exchange carrier under the access stimulation rules, INS would need to refile and reduce its rates because its costs and demand were not reflected in INS's tariff filing; rather, INS has manipulated its CEA rates. *See* Compl. § V; AT&T Legal Analysis, Part IV; AT&T Reply Legal Analysis, Part III.

AT&T denies that INS's classification as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)) that provides CEA service excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II.

AT&T denies that INS's filed tariff rates fully comply with the Commission's rules and the Communications Act. Compl. §§ II-V. AT&T denies that it is required to render payment for those tariff rates for traffic AT&T routed over INS's CEA network. *Id.* §§ I-II; AT&T Legal Analysis, Parts I-III.

103. AT&T denies that the Act's limitations period means that all facts prior to limitations period are irrelevant. The point is that INS is primarily not a legitimate CEA provider, but rather handles mostly access stimulation traffic, and even though INS's traffic volumes have decreased somewhat since 2011 (whether from bypass, or declines in legitimate CEA service, or other reasons), INS still carried in 2016 at least *2 billion* minutes of access stimulation traffic (and a similar result holds true as to INS's revenues). *See* Compl. §§ I-II; *see also* paragraphs 48 and 49, *supra*. It is thus undeniable (and INS does not deny) that INS carried enormous volumes of access stimulation traffic (which INS plainly knew and identified in its tariff filings), which it then improperly billed using its tariffed rate for CEA service. Compl. §§ I-II. AT&T further denies that the recent decline in INS's switched access minutes is due to a decrease in access stimulation, and rather many carriers are bypassing INS. Rhinehart Reply Decl.; INS Answer ¶ 111.

104. AT&T denies that INS has not engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III;

AT&T Reply Legal Analysis, Part III. INS has engaged in access stimulation, as INS's ratio of terminating minutes to originating minutes has been well above the 3-to-1 ratio every single year since 2008, and has agreements with access stimulating CLECs that constitute access revenue sharing agreements under the Commission's rules. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part IV.

AT&T denies that INS's classification as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)) excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II.

105. AT&T denies that INS has not engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part III. INS has engaged in access stimulation, as INS's ratio of terminating minutes to originating minutes has been well above the 3-to-1 ratio every single year since 2008, and has agreements with access stimulating CLECs that constitute access revenue sharing agreements under the Commission's rules. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part IV.

AT&T denies that INS's classification as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q)) excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. AT&T denies that INS is not a LEC – INS is a LEC pursuant to its own admission (see Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II.

106. AT&T denies that INS has not engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part III. INS has agreements with access stimulating CLECs that constitute access revenue sharing agreements under the Commission's rules. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part IV. AT&T denies that the Commission's rate cap and rate parity rules do not apply to INS. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. The rules apply to any LECs and all switched access services, and because INS has admitted that it is a LEC (see Answer ¶ 92) and provides "interstate or intrastate exchange access," those rules apply to INS. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II.

107. AT&T denies that INS has not engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part III. INS has agreements with access stimulating CLECs that constitute access revenue sharing agreements under the Commission's rules. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part IV. AT&T denies that the Commission's rate cap and rate parity rules do not apply to INS. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. The rules apply to any LECs and all switched access services, and because INS has admitted that it is a LEC (see Answer ¶ 92) and provides "interstate or intrastate exchange access," those rules apply to INS. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II.

108. AT&T denies that INS has not engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III;

AT&T Reply Legal Analysis, Part III. INS has agreements with access stimulating CLECs that constitute access revenue sharing agreements under the Commission's rules. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part IV. AT&T denies that INS's declaration is sufficient to rebut the presumption of access stimulation, *see* AT&T Reply Legal Analysis, Part III.

109. AT&T denies that INS has never engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III. Under INS's traffic agreements with access stimulation CLECs, INS provides services to the CLECs (including switching and transmission) at no charge, and thus those agreements constitute revenue sharing agreements. AT&T Legal Analysis, Part III.A; AT&T Reply Legal Analysis, Part III. INS's allegations about the purposes and terms of the traffic agreements are denied, and are addressing Part III of AT&T's Reply Legal Analysis.

110. AT&T denies that INS has never engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III. Under INS's traffic agreements with access stimulation CLECs, INS provides services to the CLECs (including switching and transmission) at no charge, and thus those agreements constitute revenue sharing agreements. AT&T Legal Analysis, Part III.A; AT&T Reply Legal Analysis, Part III. INS's allegations about the purposes and terms of the traffic agreements are denied, and are addressing Part III of AT&T's Reply Legal Analysis.

111. AT&T is unaware whether INS has shared access revenue with any free conference call company, and those allegations are denied. However, as AT&T has explained, AT&T denies that INS has never engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III. Under INS's traffic

agreements with access stimulation CLECs, INS provides services to the CLECs (including switching and transmission) at no charge, and thus those agreements constitute revenue sharing agreements. AT&T Legal Analysis, Part III.A; AT&T Reply Legal Analysis, Part III.

As to the allegations in and after the third sentence, AT&T admits that carriers are engaged in bypass of INS, however, it is not entirely clear whether that bypass is occurring in part over INS's own facilities. Rhinehart Reply Decl. AT&T maintains that, initially, INS's network was essential to facilitating traffic pumping. Compl. ¶ 49. The point, however, is that, regardless of what bypass is occurring, INS continues to carry at least 2 billion minutes of access stimulation traffic, and it has not properly billed for that traffic. Compl. §§ II-V.

112. AT&T denies that INS has never engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III. Under INS's traffic agreements with access stimulation CLECs, INS provides services to the CLECs (including switching and transmission) at no charge, and thus those agreements constitute revenue sharing agreements. AT&T Legal Analysis, Part III.A; AT&T Reply Legal Analysis, Part III. AT&T denies that the IUB or the courts ever approved INS's traffic agreements with access stimulation CLECs; nor did the IUB or the courts ever approve of any indefinite monopoly for INS's intrastate services. *See* AT&T Reply Legal Analysis. AT&T also denies all of INS's allegations regarding its revenues and rates of return. *See*, *e.g.*, Rhinehart Decl. and Rhinehart Reply Decl. AT&T also denies that INS has shown that it invested in "modern information services" or "advanced network services to rural Iowa," but it appears that, to the extent INS did so, it was because INS overcharged consumers for handling access stimulation traffic, in violation of the Commission's rules and policy. *See* Compl. §§ II-V; *Connect America Order* ¶ 666

(rejecting the view that revenues from access stimulation are beneficial because they support the expansion of broadband services to rural communities).

113. AT&T denies that INS has never engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III. Under INS's traffic agreements with access stimulation CLECs, INS provides services to the CLECs (including switching and transmission) at no charge, and thus those agreements constitute revenue sharing agreements. AT&T Legal Analysis, Part III.A; AT&T Reply Legal Analysis, Part III. Further, INS's claims about the *All American* case are inapposite. The point that AT&T is making (and that INS does not deny) is that the both the intermediate transport provider (Beehive and INS, respectively) and the terminating CLECs (All American and the Iowa CLECs) agreed to an overall access stimulation scheme to inflate access charges, with the intermediate providers billing and retaining the transport revenues , and the CLECs billing the end office charges (retaining that portion not shared with conference and chat providers) Just as Beehive was an integral part of the scheme in *All American* (including by delivering the traffic), INS is an integral part of access stimulation schemes in Iowa, and neither Beehive nor INS need to share their access revenues directly with the conference and chat companies in order for the schemes to be implemented.

114. AT&T denies that INS has never engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III. Under INS's traffic agreements with access stimulation CLECs, INS provides services to the CLECs (including switching and transmission) at no charge, and thus those agreements constitute revenue sharing agreements. AT&T Legal Analysis, Part III.A; AT&T Reply Legal Analysis, Part III.

AT&T denies that INS's classification as a dominant carrier, *i.e.*, a carrier found to have market power (47 C.F.R. § 61.3(q)) that provides CEA service excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis Part II. INS is a LEC pursuant to its own admission (*see* Answer ¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II.

AT&T denies that INS is not a CLEC. Under the access stimulation rules, INS is reasonably considered a CLEC. Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. In any event, even if INS were considered a "rate-of-return" local exchange carrier under the access stimulation rules, INS would need to refile and reduce its rates because its costs and demand were not reflected in INS's tariff filing; rather, INS has manipulated its CEA rates. *See* Compl. § V; AT&T Legal Analysis, Part IV; AT&T Reply Legal Analysis, Part IV.

115. AT&T denies that INS has never engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III. Under INS's traffic agreements with access stimulation CLECs, INS provides services to the CLECs (including switching and transmission) at no charge, and thus those agreements constitute revenue sharing agreements. AT&T Legal Analysis, Part III.A; AT&T Reply Legal Analysis, Part III.

AT&T denies that INS's classification as a dominant carrier, *i.e.*, a carrier found to have market power (47 C.F.R. § 61.3(q)) that provides CEA service excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. INS is a LEC pursuant to its own admission (*see* Answer

¶ 92), and any LEC is subject to those rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. INS is required to refile its rates as a CLEC (or, if not, then as a rate of return LEC), *see* Compl. § III.

116. AT&T denies that the Commission's rate cap and rate parity rules do not apply to INS, and AT&T denies that INS's classification as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q) that provides CEA service excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. The rules apply to any LECs and all switched access services, and because INS has admitted that it is a LEC (see Answer ¶ 92) and provides "interstate or intrastate exchange access," those rules apply to INS. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II.

AT&T denies that INS has not engaged in access stimulation and/or is not a party to any access revenue sharing agreement. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part III. INS has agreements with access stimulating CLECs that constitute access revenue sharing agreements under the Commission's rules. *See* Compl. § IV.B; AT&T Legal Analysis, Part III; AT&T Reply Legal Analysis, Part IV.

AT&T denies that INS has "already complied with those rules by reducing its CEA tariff rate to reflect costs and demand in accordance with Section 61.38." *See* AT&T Reply Legal Analysis, Part III.

117. AT&T denies that INS is not a CLEC. Under the access stimulation rules, INS is reasonably considered a CLEC. *Id.* In any event, even if INS were considered a "rate-of-return" local exchange carrier under the access stimulation rules, INS would need to refile and reduce its rates because its costs and demand were not reflected in INS's tariff filing; rather, INS has

manipulated its CEA rates. *See* Compl. § V; AT&T Legal Analysis, Part IV; AT&T Reply Legal Analysis, Part III-IV.

AT&T denies that INS's classification as a dominant carrier, i.e., a carrier found to have market power (47 C.F.R. § 61.3(q) that provides CEA service excludes INS from the Commission's rate cap and rate parity rules. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II. The rules apply to any LECs and all switched access services, and because INS has admitted that it is a LEC (see Answer ¶ 92) and provides "interstate or intrastate exchange access," those rules apply to INS. *See* Compl. § III; AT&T Legal Analysis, Part II; AT&T Reply Legal Analysis, Part II.

As to the last sentence of paragraph 117, AT&T denies that, in current market conditions, unnamed IXCs need to connect directly with INS in order to serve small towns and rural areas even as to legitimate CEA traffic (AT&T Reply Legal Analysis, Part I.B.); as to the access stimulation traffic that makes up most of INS's current switched access services, smaller IXC (as well as larger IXCs) are being harmed because INS has not properly conformed the applicable rates to INS's 2-3 billion minutes of access stimulation traffic it has carried annually over the past several years. Compl. §§ I-V; *Connect America Order* ¶¶ 662-666. As such, compared to the prices that should apply to transporting large volumes of access stimulation traffic in Iowa, Compl. § II.A.2., INS has substantially inflated and "increase[d] interstate transport charges." Answer ¶ 117. AT&T also denies that, on the 2-3 billion minutes of access stimulation traffic that INS transports to a small number of access stimulation CLECs, INS's service is "efficient" or that INS is providing any necessary "traffic concentration," and there are in fact much more efficient ways of transporting this traffic. *See id.*

118. AT&T denies that INS's CEA rates are just or reasonable under 47 U.S.C. § 201(b) or that they are "deemed lawful" under 47 U.S.C. § 204(a)(3). *See* AT&T Legal Analysis & Reply Legal Analysis, Parts II.B & IV; *ACS*, 290 F.3d at 413. AT&T denies the allegations to the extent they suggest that Defendant's tariff filings, cost allocations, revenue requirement, or cost support materials are in compliance with the Commission's rules or proper accounting methods. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV. AT&T denies that Defendant has utilized a consistent methodology to calculate its revenue requirement, and further notes that Defendant has failed to disclose—either in discovery or in its Answer—sufficient cost support material to justify its lease cost calculations, cost allocations, forecasting, and other issues. AT&T denies the allegations to the extent they suggest the Commission has approved Defendant's methodology for calculating its revenue requirement. AT&T denies that the cost support materials submitted with Defendant's Tariff Review Plan filings demonstrate a lack of "furtive concealment." *See ACS*, 290 F.3d at 413. Again, because Defendant has failed to provide sufficient cost support material, AT&T lacks sufficient information to determine the accuracy of Defendant's lease cost calculations, cost allocations, forecasting, and other issues. Otherwise, paragraph 118 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

119. AT&T denies Defendant's allegations to the extent they suggest that the Commission gave approval in its Fifth Report and Order or 214 Order to allocate costs and divide services in a manner that violates the Commission's rules or proper accounting methods. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV. AT&T admits that Defendant accurately quotes from those decisions. To the extent Defendant purports to paraphrase the decisions, AT&T states that the decisions speak for themselves. AT&T admits that the "IXC Division" or "Network

Division" (however styled)[1] owns the fiber network, but AT&T denies that the services provided by the IXC Division to the Access Division are competitive, and AT&T further denies any suggestion that INS has billed only for legitimate CEA service pursuant to its tariff. Otherwise, paragraph 119 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

120. AT&T admits that a carrier's use of separate divisions may be proper or required but denies the allegations to the extent they suggest that Defendant's cost allocations between its divisions are in compliance with the Commission's decisions or proper accounting methods. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV. AT&T admits that Defendant accurately quotes from ¶ 119 of the Complaint. AT&T denies the allegations to the extent that they imply the FCC 214 Order addresses the cross-subsidization concerns presented in this Complaint or that the Commission has addressed these particular concerns in a prior proceeding. AT&T admits that Defendant accurately quotes from the FCC 214 Order, but to the extent Defendant purports to paraphrase the decisions, AT&T states that the decisions speak for themselves. AT&T denies that Defendant has complied with the Commission's requirements addressing cross-subsidization. Otherwise, paragraph 120 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

121. AT&T denies that Defendant's CEA rates are just or reasonable under 47 U.S.C. § 201(b). AT&T also denies that Defendant has properly filed a CEA tariff entitled to "deemed lawful" status under 47 U.S.C. § 204(a)(3). *See* AT&T Legal Analysis, Parts II.B & IV; *ACS*, 290

[1] *See* Ex. 56, Letter from James U. Troup and Tony S. Lee (Counsel for INS) to Michael J. Hunseder and James F. Bendernagel (Counsel for AT&T) (dated March 10, 2017) (calling the division the "IX Network" Division).

F.3d at 413. AT&T denies that Defendant's CEA tariff rates and revenue requirement have been calculated using proper accounting methods or in accordance with the Commission's rules. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV. As explained in AT&T's Legal Analysis, Defendant's network and lease cost allocations, inaccurate forecasting, and other cost material raise serious concerns regarding rate manipulation and furtive concealment. *See id*. Otherwise, paragraph 121 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

122. AT&T denies that Defendant has employed proper accounting methods or that its cost support materials fully disclose the extent of Defendant's cross-subsidization. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV. AT&T denies that Defendant has billed reasonable rates or that those rates are properly calculated under the Commission's rules. *See id*. AT&T denies the allegations to the extent that they imply the FCC 214 Order addresses the cross-subsidization concerns presented in this Complaint or that the Commission has addressed these particular concerns in a prior proceeding. AT&T admits that Defendant accurately quotes from the FCC 214 Order, but to the extent Defendant purports to paraphrase the decision, AT&T states that the decision speaks for itself. AT&T denies that Defendant has complied with the Commission's requirements addressing cross-subsidization. *See id*. Otherwise, paragraph 120 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

123. AT&T denies that Defendant's CEA tariff rates and revenue requirement have been calculated using proper accounting methods or in accordance with the Commission's rules. As explained in AT&T's Legal Analysis, Defendant's network and lease cost allocations, inaccurate forecasting, and other cost material raise serious concerns regarding rate manipulation and furtive

concealment *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV. AT&T lacks sufficient information to determine whether Defendant has utilized a consistent methodology to calculate its revenue requirement, as it has failed to disclose—either in discovery or in its Answer—sufficient cost support material to justify its lease cost calculations, cost allocations, forecasting, and other issues. AT&T denies the allegations to the extent they suggest the Commission has approved Defendant's methodology for calculating its revenue requirement.

AT&T admits that Defendant's CEA rate has declined only about three tenths of a cent between 1989 and 2017 (roughly 23.4 percent), but AT&T re-asserts that the rate has actually increased since 2011 when the Commission capped access rates at their then-current levels, and Defendant informed the Commission in its most recent filing that the rate supported by its projected revenue requirements ($0.01332 per minute) is almost two tenths of a cent higher than its CEA rate in 1989. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV.A. AT&T agrees that if INS were to exclude the Uncollectible Revenues that it has improperly included in rate base that the rate would decrease by 58%. However, AT&T notes that Defendant has continued to make costly investments in its network, despite declining demand for CEA service. *See id*.

AT&T admits that Defendant is only one of four carriers authorized to provide CEA service but denies that CEA service generally, or Defendant's network specifically, is incomparable to access service provided by other LECs. The assertion that Defendant's CEA service is different because it is provided to less populous areas does not explain the huge differential between the trend line for INS's CEA service (a decline of about 23% in the period 1988 to 2010) and the trend line for switched access rates generally (a decline of about 80% over the same period). *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV.A;

Rhinehart Reply Decl. ¶ 16. AT&T denies that the structure of INS's CEA rate or the size of its fiber network justify its continuing high CEA rates, as INS offers no explanation as to why this structure would justify the large differential between the trend line for INS's CEA service and the trend line for switched access rates generally. AT&T denies that reductions in non-CEA rates across the industry, as well as reductions in Defendant's own non-CEA rates, have no bearing on whether Defendant's CEA rates are excessive or should be reduced. AT&T lacks sufficient information to assess whether Defendant's non-CEA services are specifically tailored or involve small amounts of transport and capacities but to the extent they do denies that that somehow supports the reasonableness of INS's CEA rates.

AT&T admits that depreciation should not have a significant impact on Defendant's CEA rates. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV.A; Rhinehart Decl. ¶ 9. AT&T admits that overall traffic volume on INS's CEA network has decreased since 2012, but AT&T re-asserts that this is largely due to declines in legitimate CEA traffic rather than access stimulation traffic. *See id*. AT&T denies that Defendant's CEA rates reflect cost efficiency gains, because there has been no effect on the rate, and Defendant's decision to continue to invest large sums in its network will have a detrimental effect on rates as demand for the service continues to decline. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV.A; Rhinehart Decl. ¶ 10. AT&T admits that INS has reported millions of dollars in infrastructure upgrades, but denies that INS's CEA rates are reasonable. AT&T denies that INS's current CEA rate is not excessive. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV. Otherwise, paragraph 123 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

124. AT&T admits that a carrier's use of separate divisions may be proper or required but denies the allegations to the extent they suggest that Defendant's cost allocations between its divisions are in compliance with the Commission's decisions or proper accounting methods. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV. AT&T admits that Defendant accurately quotes from the Fifth Report and Order. To the extent Defendant purports to paraphrase the Fifth Report and Order or the FCC 214 Order, or to interpret other FCC rules, AT&T states that the decisions and rules speak for themselves.

AT&T admits that Defendant's Tariff Filings include transport costs but denies that those cost have been properly calculated or allocated. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV. AT&T admits that certain lease costs have been assigned to the Access Division, as well as other divisions, but AT&T denies the cost allocations conform to the Commission's decisions or proper accounting methods and notes that Defendant has not provided sufficient information to demonstrate the reasonableness of its rates. AT&T denies that the lease costs assigned to the Access Division are reasonable, *see id*. Part IV.B, but AT&T lacks sufficient information to determine the accuracy of the IXC Division lease costs or whether the methodology used to assess the "reasonableness" of the lease cost allocations is sound. Otherwise, paragraph 124 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

125. AT&T admits that a carrier's use of separate divisions may be proper or required but denies the allegations to the extent they suggest that Defendant's cost allocations between its divisions are in compliance with the Commission's decisions or proper accounting methods. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV. AT&T admits that Defendant accurately quotes from the Fifth Report and Order. To the extent Defendant purports to paraphrase the Fifth

Report and Order or the FCC 214 Order, or to interpret other FCC rules, AT&T states that the decisions and rules speak for themselves.

AT&T admits that Defendant's Tariff Filings include transport costs but denies that those costs have been properly calculated or allocated. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV. AT&T admits that certain lease costs have been assigned to the Access Division, as well as other divisions, and included in Account 6410, but AT&T denies that the cost allocations conform to the Commission's decisions or proper accounting methods and notes that Defendant has not provided sufficient information to demonstrate the reasonableness of its rates. Otherwise, paragraph 125 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied

126. AT&T denies that Defendant's cost allocations are in compliance with the Commission's decisions or accounting rules. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV. AT&T denies that its allegations fail to consider actual allocated expenses. *See id*. Part IV.D. AT&T admits that certain lease costs have been assigned to the Access Division and included in Account 6410, but AT&T denies that the cost allocations conform to the Commission's rules or proper accounting methods and notes that Defendant has not provided sufficient information to demonstrate the reasonableness of its rates. AT&T denies the remaining allegations to the extent they suggest INS is in compliance with the Commission's decisions or accounting rules. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV. AT&T lacks sufficient information to determine whether INS's non-lease expenses have been assigned or allocated in compliance with the Commission's decisions or accounting rules. Otherwise, paragraph 126 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

127. AT&T denies that INS's cost allocations conform to the Commission's rules or proper accounting methods and notes that Defendant has not provided sufficient information to demonstrate the reasonableness of its rates. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV.B; Rhinehart Reply Decl. ¶¶ 21-30. Similarly, Defendant has not provided additional data to substantiate the accuracy of its cost support or the reliability of its forecasting. Such data is essential to understand how—and why—Defendant's lease cost forecasting was so highly inaccurate. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV.B; Rhinehart Decl. ¶¶ 22-23. AT&T admits that Defendant's Tariff Filings include transport costs but denies that those cost have been properly reported or allocated. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV.

AT&T denies that Mr. Rhinehart's assumptions are flawed or that his rate comparison analysis is erroneous. AT&T admits that certain lease costs have been assigned to the Access Division and included in Account 6410, but AT&T denies that the cost allocations conform to the Commission's rules or proper accounting methods and further notes that INS has not provided sufficient information to demonstrate the reasonableness of its rates. INS's Tariff Filings do not break out on a separate basis the lease costs that the Access Division pays to the IXC Division, nor do they report that the amounts in the Cable & Wire Facilities account are equal to the lease payments made by the Access Division to the IXC Division. Rhinehart Reply Decl. ¶ 24. AT&T also lacks sufficient information to determine to assess the basis for the lease rates charged by the IXC division, as well as whether INS's non-lease expenses have been assigned or allocated in compliance with the Commission's decisions or accounting rules. Finally, AT&T lacks sufficient information to assess the soundness of the methodology INS purportedly used to assess the "reasonableness" of its lease cost allocations. Otherwise, paragraph 127 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

128. AT&T denies that Defendant has properly allocated costs between interstate and intrastate traffic. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV. AT&T lacks sufficient information to determine the accuracy of Defendant's allegations regarding upgrades to Defendant's billing system and how this—or other factors—impacted Defendant's PIU factor. AT&T admits that IXCs, including AT&T, provide jurisdictional call information, but AT&T denies any suggestion that IXCs, including AT&T, are responsible for any inaccuracies in Defendant's PIU factor. AT&T also denies that INS has no control over the jurisdiction of the traffic on its network, or that the intrastate and interstate traffic allocations are simply a function of the traffic on the network, in light of the nature of INS's traffic agreements with access stimulating CLECs. *See* Rhinehart Reply Declaration ¶ 45. Moreover, AT&T notes that Defendant has failed to respond to the critical allegations at issue—that is, Defendant's misallocation of *costs* based on its reported PIU factor. *See* Rhinehart Decl. ¶¶ 32-33; Rhinehart Supp. Decl. ¶¶ 40-43; AT&T Legal Analysis & Reply Legal Analysis, Part IV.E. Otherwise, paragraph 128 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

129. AT&T denies that Defendant had no obligation to inform the Commission of a change to a major assumption underlying the Commission's provision of CEA service. To the extent Defendant purports to paraphrase the *FCC 214 Order*, or to interpret other FCC rules, AT&T states that the decisions and rules speak for themselves. AT&T denies that Defendant has properly allocated costs between interstate and intrastate traffic. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV.E. AT&T lacks sufficient information to determine the accuracy of

Defendant's allegations regarding upgrades to Defendant's billing system and how this—or other factors—impacted Defendant's PIU factor. AT&T also denies that Defendant is not involved in access stimulation. *See* AT&T Legal Analysis & Reply Legal Analysis Part III.

AT&T also lacks sufficient information to determine the truth of Defendant's allegations regarding cost shifting. AT&T admits that IXCs, including AT&T, provide jurisdictional call information, but AT&T denies any suggestion that IXCs, including AT&T, are responsible for any inaccuracies in Defendant's PIU factor. AT&T also denies that INS has no control over the jurisdiction of the traffic on its network, or that the intrastate and interstate traffic allocations are simply a function of the traffic on the network, in light of the nature of INS's traffic agreements with access stimulating CLECs. *See* Rhinehart Reply Declaration ¶ 45. Otherwise, paragraph 129 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

130. AT&T denies any suggestion that Defendant has properly allocated costs between interstate and intrastate traffic. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV.E. AT&T lacks sufficient information to determine the accuracy of Defendant's allegations regarding upgrades to Defendant's CEA switches or billing system and how these—or other factors—impacted Defendant's PIU factor. Otherwise, paragraph 130 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.]

131. AT&T denies that Defendant's traffic forecasts are reliable. For the test periods from July 1, 2004 through June 30, 2011, Defendant underestimated demand by an average of *240 million minutes* per year, which in a number of years has caused Defendant to greatly exceed its allowed rate of return. *See* AT&T Legal Analysis & Reply Legal Analysis Part IV.F; Rhinehart

Decl. ¶¶ 34-36 & Table H. AT&T admits that actual demand in selected test periods was within approximately 5-6% of traffic forecasts, but AT&T denies any suggestion that a smaller misforecast in hand-selected years is an indicia of the reliability of Defendant's forecasting methods. To the contrary, Defendant's forecasts vary widely from year to year, and in the most recent test period for which actual demand is available, Defendant underestimated demand by over 450 million minutes (or 22.37%). *See* Rhinehart Decl. ¶ 34, Table H. Otherwise, paragraph 131 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

132. AT&T denies that uncollectible revenues have always been part of Defendant's revenue requirement, as Defendant correctly excluded improperly billed CEA charges from its 2008 forecast.[2] AT&T also denies that Defendant has "properly billed" for CEA service, as Defendant's CEA tariff suffers from multiple deficiencies, including its violation of the Commission's rate cap and rate parity rules. *See generally* AT&T Legal Analysis & Reply Legal Analysis. AT&T denies that the "Uncollectible Revenues" are a "known direct cost," because [[**BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV.G; Rhinehart Reply Decl. ¶ 52-57. AT&T further denies that INS has properly included the cost of uncollectible revenues in its cost studies. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV.G. AT&T also denies that it is has refused to fully pay for CEA service that was properly billed—AT&T has paid for all legitimate CEA traffic and has withheld only those amounts that relate to access stimulation and were

[2] *See* Ex. 18, INS 2010 Tariff Filing, at 2 (explaining that INS began to experience an increase in uncollectibles in 2007)

improperly billed due to Defendant's violation of the rate cap and rate parity rules. *See, e.g.*, Habiak Decl. ¶¶ 47-52; AT&T Legal Analysis & Reply Legal Analysis, Part IV.G. Otherwise, paragraph 132 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

133. AT&T denies that the inclusion of uncollectibles in Defendant's revenue requirement is appropriate. *See* Legal Analysis, Part IV.G. AT&T denies that uncollectible revenues have always been part of Defendant's revenue requirement, as Defendant correctly excluded improperly billed CEA charges from its 2008 forecast.[3] AT&T also denies that Defendant has "properly billed" for CEA service, as Defendant's CEA tariff suffers from multiple deficiencies, including its violation of the Commission's rate cap and rate parity rules. *See generally* AT&T Legal Analysis & Reply Legal Analysis. AT&T denies that the "Uncollectible Revenues" are a "known direct cost," because INS is actively seeking to collect these costs and has not, in fact, written them off as "uncollectible." *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV.G; Rhinehart Reply Decl. ¶ 52-57. AT&T further denies that INS has properly included the cost of uncollectible revenues in its cost studies. *See* AT&T Legal Analysis & Reply Legal Analysis, Part IV.G. AT&T also denies that it is has refused to fully pay for CEA service that was properly billed—AT&T has paid for all legitimate CEA traffic and has withheld only those amounts that relate to access stimulation and were improperly billed due to Defendant's violation of the rate cap and rate parity rules. *See, e.g.*, Habiak Decl. ¶¶ 47-52; AT&T Legal Analysis & Reply Legal Analysis, Part IV.G. Otherwise, paragraph 133 does not contain factual

[3] *See* Ex. 18, INS 2010 Tariff Filing, at 2 (explaining that INS began to experience an increase in uncollectibles in 2007)

allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

134. AT&T repeats and re-alleges each and every response contained in paragraphs 1 to 133 of this Reply to Defendant's Answer as if set forth fully herein.

135. Paragraph 135 of the Answer does not contain any factual allegation or legal argument that AT&T is required to address in this Reply.

136. AT&T denies that access stimulation is encompassed within CEA traffic or the mandatory use requirement, that INS could properly bill AT&T its CEA rates on access stimulation traffic, and that properly barring INS from imposing its CEA on access stimulation traffic would have a material negative impact on INS rates or long distance competition. Compl. ¶¶ 62-80; *supra* ¶¶ 62-80. AT&T denies that INS is not engaged in access stimulation and denies that INS did not violate the access stimulations rules. Compl. ¶¶ 102-117; *supra* ¶¶ 102-117. AT&T denies that INS is not subject to the Commission's rate cap and rate parity rules. Compl. ¶¶ 86-117; *supra* ¶¶ 86-117. AT&T denies that INS's CEA rate is just and reasonable. Compl. ¶¶ 118-132; *supra* ¶¶ 118-132. Paragraph 136 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

137. AT&T denies the allegations of this paragraph, which are also set forth in paragraphs 62 through 75 of INS's Answer, for the factual and legal reasons set forth in paragraphs 62 through 75 of AT&T's Complaint and Reply. Paragraph 137 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

138. AT&T denies the allegations of this paragraph, which are also set forth in paragraphs 76 through 80 of INS's answer, for the factual and legal reasons set forth in paragraphs 76 through 80 of AT&T's Complaint and Reply. Paragraph 138 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

139. AT&T denies the allegations of this paragraph, which are also set forth in paragraphs 81 through 85 of INS's Answer, for the factual and legal reasons set forth in paragraphs 81 through 85 of AT&T's Complaint and Reply. Paragraph 139 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

140. AT&T denies the allegations of this paragraph, which are also set forth in paragraphs 86 through 101 of INS's Answer, for the factual and legal reasons set forth in paragraphs 86 through 101 of AT&T's Complaint and Reply. Paragraph 140 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

141. AT&T denies the allegations of this paragraph, which are also set forth in paragraphs 102 through 117 of INS's Answer, for the factual and legal reasons set forth in paragraphs 102 through 117 of AT&T's Complaint and Reply. Paragraph 141 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

142. AT&T denies the allegations of this paragraph, which are also set forth in paragraphs 107 through 117 of INS's Answer, for the factual and legal reasons set forth in paragraphs 107 through 117 of AT&T's Complaint and Reply. Paragraph 142 of the Answer does

not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

143. AT&T denies the allegations of this paragraph, which are also set forth in paragraphs 115 through 117 of INS's Answer, for the factual and legal reasons set forth in paragraphs 115 through 117 of AT&T's Complaint and Reply. Paragraph 143 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

144. AT&T denies the allegations of this paragraph, which are also set forth in paragraphs 118 through 133 of INS's Answer, for the factual and legal reasons set forth in paragraphs 118 through 133 of AT&T's Complaint and Reply.

145. AT&T denies the allegations of paragraph 145, which incorporate all of INS's pleadings, for the reasons set forth in all of AT&T's pleadings.

146. AT&T denies the allegations of paragraph 146, which incorporate all of INS's pleadings, for the reasons set forth in all of AT&T's pleadings.

147. AT&T repeats and re-alleges each and every response contained in paragraphs 1 to 146 of this Reply to Defendant's Answer as if set forth fully herein.

148. Paragraph 148 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

149. AT&T denies the allegations of this paragraph, which are also set forth in paragraphs 62-75, 86-101 and 107-117 of INS's Answer, for the factual and legal reasons set forth in paragraphs 62-75, 86-101 and 107-117 of AT&T's Complaint and Reply. Paragraph 149 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

150. AT&T denies the allegations of this paragraph, which are also set forth in paragraphs 62 through 75 of INS's Answer, for the factual and legal reasons set forth in paragraphs 62 through 75 of AT&T's Complaint and Reply. Paragraph 150 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

151. AT&T denies the allegations of this paragraph, which are also set forth in paragraphs 86 through 101 of INS's Answer, for the factual and legal reasons set forth in paragraphs 86 through 101 of AT&T's Complaint and Reply. Paragraph 151 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

152. AT&T denies the allegations of this paragraph, which are also set forth in paragraphs 107 through 117 of INS's Answer, for the factual and legal reasons set forth in paragraphs 107 through 117 of AT&T's Complaint and Reply. Paragraph 152 of the Answer does not contain any other factual allegation or legal argument that AT&T is required to address in this Reply. If it does, however, those allegations are denied.

153. AT&T denies the allegations of paragraph 145, which incorporate all of INS's pleadings, for the reasons set forth in all of AT&T's pleadings.

154. AT&T denies the allegations of paragraph 145, which incorporate all of INS's pleadings, for the reasons set forth in all of AT&T's pleadings.

155. AT&T denies the allegations of and requests for rulings in this paragraph, which incorporate all of INS's pleadings and supporting materials, for the reasons set forth in all of AT&T's pleadings and supporting materials. INS is not entitled to any of the rulings it requests

## AT&T'S RESPONSE TO AFFIRMATIVE DEFENSES

### A. Failure to State a Cause of Action

AT&T denies that its Complaint fails to state a claim upon which relief can be granted because AT&T alleges facts that, if true, establish that Defendant violated the Communications Act ("Act"). *See, e.g.*, Compl. ¶¶ 1–4, 134–54. Under Section 208 of the Communications Act, any person may bring a complaint at the Commission for a common carrier's violation of the Act. 47 U.S.C. § 208. INS is a common carrier. Answer ¶ 19. AT&T's Complaint alleges that Defendant violated Sections 201(b) and 203 of the Act. *See, e.g.*, Compl. ¶¶ 1, 134–54. In particular, AT&T alleges facts that, if true, establish that Defendant violated various rules and orders of the Commission, that these rules and orders lawfully implement Sections 201(b) and 203, and that INS's violation of these rules and orders therefore violate the Act. *See, e.g.*, Compl. ¶¶ 1–4, 134–54.

AT&T denies that INS's CEA rates "are just and reasonable as a matter of law" because they "are deemed lawful." *See* AT&T Legal Analysis, Part II.B. AT&T alleges facts that, if true, establish that INS's CEA rates are unreasonable, unlawful, and violative of the Act. *See, e.g.*, Compl. ¶¶ 1, 134–54. INS's other assertions in this paragraph regarding its rate of return are irrelevant to whether AT&T has stated a claim upon which relief can be granted, as AT&T's claims against INS are not dependent on INS's rate of return. AT&T's Complaint states valid claims for relief.

### B. Statute of Limitations

Because AT&T has bifurcated its liability and damages claim, Compl. ¶ 59 n.63, AT&T denies that its claims relating to liability "are barred by the two-year statute of limitations" in 47 U.S.C. § 415(b). INS does not and cannot dispute that AT&T has alleged sufficient facts within the statute of limitations that INS has violated Sections 201 and 203. Compl. ¶¶ 134–54. As such, AT&T cannot be *completely precluded* from recovering damages. *AT&T Servs. Inc. v. GLC*, 30 FCC Rcd. 2586, ¶¶ 35, 38 (2015), *review denied in relevant part*, 823 F.3d. 998 (D.C. Cir. 2016). Given that AT&T has asserted claims that are not barred by 47 U.S.C. § 415(b), a more exact determination of the applicable limitations period should be deferred to the damages phase of this proceeding. *See id*. ¶ 38 ("Because AT&T elected to bifurcate its claims for damages pursuant to Section 1.722(d) of the Commission's Rules, we do not address in this *Order* the Defendants' affirmative defenses relating to the extent of any damages AT&T allegedly incurred.").

### C. Red Judicata and Collateral Estoppel

INS asserts that the Commission's 1988 Section 214 proceeding, an administrative proceeding nearly 30 years ago, through which the FCC granted INS authority to operate transmission facilities in Iowa, bars AT&T's current claims under both res judicata and collateral estoppel. AT&T denies that any of its claims are barred by res judicata or collateral estoppel because the elements required for res judicata and collateral estoppel cannot be met here.

Regarding res judicata, the Commission applies the "classic formulation of res judicata" set forth by the United States Supreme Court such that "[t]hree elements must be present before a claim will be barred by a judgment in a prior action": "The prior action must have: (1) shared a common nucleus of operative facts with the subsequent action; (2) resulted in a final judgment on the merits; and (3) involved the same parties or their privies." *Teleservs. Indus. Ass'n v. AT&T Corp*., 15 FCC Rcd. 21454, 21457 ¶ 8 (2000).

Here, the first element, "a common nucleus of operative facts," cannot be met. The 1988 proceeding involved whether, under Section 214 of the Act and the Commission's then-existing implementing rules, it was appropriate to allow approximately 130 Iowa independent incumbent

LECs to create an entity to provide "centralized equal access" as a possible "solution to the problem of how to achieve competition in long distance services in small rural communities." *INS Order*, ¶ 3. The facts present in 1988 were that each individual LEC had a "low amount of toll traffic [that] they generate." *Id.* Further, many LECs could not at that time feasibly provide "equal access" to allow their customers to use 1+ dialing for other long distance carriers. *Id.* As explained in AT&T's Complaint, the facts today are much different. Compl. §§ I.A-D, II.A.

In this case, much different facts exist – indeed, most of the facts at issue in this matter did not even exist in 1988. INS, for example, is transporting at least 2-3 billion minutes annually to competitive LECs engaged in access stimulation, and is not providing any equal access capabilities on such traffic. Further, the questions involve, *inter alia*, INS's compliance with rules that the Commission put in place in 2011 (twenty-three years after INS was authorized to provide service), as well as whether INS's CEA tariff applies to very large volumes of terminating "access stimulation" traffic handled by CLEC (which did not exist in 1988). Nor did the 1988 proceedings concern whether INS manipulated its tariffed CEA rates via various accounting methods that INS put in place or changed only in the last several years. AT&T is not asking to change policies related to small volumes of traffic associated with legitimate CEA service. Rather, AT&T alleges entirely different facts and circumstances from those considered by the Commission in 1988. *See* Compl. §§ I–V; AT&T Legal Analysis, Parts I–IV. *See also Teleservs. Indus. Ass'n*, 15 FCC Rcd. at 21458 ¶ 10 ("It is 'the facts surrounding the transaction or occurrence which operate to constitute the cause of action, not the legal theory upon which a litigant relies.'"). The first element cannot be met and thus res judicata cannot bar AT&T's claims. *See, e.g.*, *In re Herring Broad., Inc*., 23 FCC Rcd. 14787, 14835 ¶ 107 (2008) (concluding that plaintiff's claims were not barred by res judicata because the claims presented "a different set of facts and circumstances than those presented in the [earlier] Complaint").

Collateral estoppel applies when "(1) the identical issue was previously litigated; (2) the issue was actually litigated; (3) the previous determination was necessary to the decision; and (4) the party being precluded from relitigating the issue was fully represented in the prior action[.]" *In re Bernard Dallas, LLC*, 31 FCC Rcd. 11107, 11108 ¶ 2 n.12 (2016) (internal quotation marks omitted). For the same reasons that res judicata does not bar AT&T's claims, collateral estoppel also does not bar AT&T's claims. None of AT&T's claims in this matter is *identical* to an issue litigated (if any issue was "litigated") in the FCC 1988 Section 214 administrative proceeding. AT&T's claims rest on, among other things, the facts of access stimulation traffic and INS's manipulation of its rates—facts that did not exist or were not considered in the FCC 1988 Section 214 proceeding, much less *identical* to the issues determined that were necessary to the decision in that proceeding. *See* Compl. §§ I–V; AT&T Legal Analysis, Parts I–IV. As such, collateral estoppel does not bar any of AT&T's claims.

### D. Government Authority and Due Process

AT&T denies that due process bars any of AT&T's claims, including AT&T's claim that INS's CEA rates are unlawful because they violate the Commission's rate cap and rate parity rules.

This is a complaint case, and "[r]etroactivity is the norm in agency adjudications." *AT&T Co. v. FCC*, 454 F.3d 332, 332 (D.C. Cir. 2006). Further, in this case, there is nothing unfair about applying the rate cap and rate parity rules to INS. INS received (or could have received) fair "notice of the [Commission's] interpretation in the most obvious way of all: by reading the regulations" and the "other public statements issued by the [Commission]." *General Elec. Co. v. EPA*, 53 F.3d 1324, 1330 (D.C. Cir. 1995). When the Commission issued the rate cap and rate parity rules in 2011 (a proceeding in which INS participated), it stated plainly that the rate caps apply to "all" switched access services. *Connect America Order* ¶¶ 798-801. INS admits that it is providing switched access services. *E.g.*, Answer ¶ 94 (INS "admits that . . . the CEA service provided by Aureon is a switched access service").

Further, the text of the Commission's regulations provided additional guidance: all of the transitional pricing rules, including the rate cap and rate parity rules, apply to "interstate or intrastate exchange access," 47 C.F.R. § 51.901(b), and INS admits that it is providing exchange access. Answer ¶ 92.

Moreover, even assuming, *arguendo*, that there was ambiguity about whether INS was a "rate-of-return carrier" subject to Section 51.909 or a CLEC subject to Section 51.911 (and, mere ambiguity alone is not enough to overcome the norm of retroactivity in complaint cases), INS plainly had fair notice that the rate cap and rate parity rules applied to it under one of those two sections. As AT&T has explained, if INS is not subject to Section 51.909, then it necessarily is subject to Section 51.911. AT&T Legal Analysis, Part II.A. Section 51.911 is applicable to "any" LEC that is not an ILEC, *see* 47 C.F.R. § 51.903(a), and INS's position is that it is a LEC that is not an ILEC. *E.g.*, Answer ¶¶ 96-97; *see also* Compl. ¶¶ 92-98 (recounting various statements by INS and the Commission that INS provides exchange access and is a LEC). Indeed, because INS was filing tariffs with the FCC that affirmatively represented that it was a LEC, INS has no possible basis to claim that it was unaware that the rate cap and rate parity rules would not apply to it.

INS also claims that the Commission's rules "did not state that the rate caps applied to dominant CEA providers like Aureon." Answer at 97. This is not accurate; in fact, the Commission's rules clearly state that the rate caps apply to all interstate switched access service and to "any" LEC, and because INS is a LEC providing such service, the Commission did clearly inform INS that the rate caps applied to it.

In short, the Commission's regulations, and its accompanying explanation in the *Connect America Order*, provide INS with ample and clear notice that INS – as a LEC providing switched access services – was subject to the rate caps.

**E. Conduct Contrary to Public Policy**

INS's "contrary to public policy" defense is meritless. INS claims that AT&T has "violated the CEA mandatory termination use policy," by requesting that access stimulation CLECs provide or permit direct connections to AT&T. This is nonsense. As AT&T explained elsewhere, there is no "mandatory use" requirement, certainly as to access stimulation traffic that INS transports to CLECs. AT&T Legal Analysis, Part I.C.4; AT&T Reply Legal Analysis, Intro. and Part I; Habiak Decl. ¶¶ 29–32. Further, CLECs engaged in access stimulation are obligated to provide or at least permit direct connections, and AT&T obviously did not act "contrary to public policy" merely by requesting these CLECs to comply with their duties under the Act and the Commission's rules. AT&T Reply Legal Analysis, Intro. INS relies on Section 69.112(i), but as explained above, *supra* ¶ 13, that provision of the rules supports AT&T, not INS.

**F. Failure to Mitigate Damages**

Because AT&T has elected to bifurcate its damages claim, Compl. ¶ 59 n.63, this affirmative defense is premature and should be deferred until any supplemental complaint for damages. In any event, AT&T denies that it failed to mitigate damages. First, the evidence in the record belies any suggestion that AT&T carries large volumes of traffic for other IXCs. *See* Rhinehart Reply Decl. Second, as the Commission has recognized, because the Commission has required IXCs to have geographically averaged rates, IXCs cannot pass on to end users the excessive costs when carriers like INS overcharge AT&T for access. *See CLEC Access Charge Order*, 16 FCC Rcd. 9923, ¶ 30 (2001) ("IXCs are effectively unable either to pass through [higher] access charges."). Third, INS seems to suggest that AT&T could block its customers' calls that they place to the access stimulation CLECs with which INS does business, but the Commission has restricted carriers' ability to block calls. *Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers*, 22 FCC Rcd 11629, ¶ 1 (WCB 2007) ("carriers that contend that the access charges of a LEC are unreasonable . . . may not engage in . . . call blocking").

**AT&T'S INFORMATION DESIGNATION**

With respect to Section 1.726(d) of the Commission's Rules, 47 C.F.R. § 1.726(d), AT&T states that it does not have anything to add to the information designation it provided with its Formal Complaint.

Respectfully submitted,

Michael J. Hunseder

Letty Friesen
AT&T SERVICES, INC
161 Inverness Drive West
Englewood, CO 80112
(303) 299-5708
(281) 664-9858 (fax)

James F. Bendernagel, Jr.
Michael J. Hunseder
Spencer Driscoll
Morgan Lindsay
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
jbendernagel@sidley.com
mhunseder@sidley.com
(202) 736-8000
(202) 736-8711 (fax)

Brian A. McAleenan
SIDLEY AUSTIN LLP
One South Dearborn

Chicago, IL 60603
(312) 853-7000
(312) 853-7036 (fax)

Dated: July 5, 2017

*Counsel for AT&T Corp.*

## CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2017, I caused a copy of the foregoing AT&T's Reply to the Answer, Response to Affirmative Defenses, And Information Designation to be served as indicated below to the following:

Marlene H. Dortch
Office of the Secretary
Market Disputes and Resolution Division
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
(Original of the Public Version, the Confidential Version, the Highly Confidential Version, and the Third Party Highly Confidential Version via Hand Delivery)

Lisa Griffin
Anthony DeLaurentis
Sandra Gray-Fields
Christopher Killion
Enforcement Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
(One Copy of the Public Version, the Confidential Version, the Highly Confidential Version, and the Third Party Highly Confidential Version via E-mail; Three Courtesy Hard Copies of the Third Party Highly Confidential Version via Hand Delivery)

James U. Troup
Tony S. Lee
Fletcher, Heald & Hildreth
1300 North 17th Street
Suite 1100
Arlington, VA 22209
troup@fhhlaw.com
lee@fhhlaw.com
(One Copy of the Public Version, the Confidential Version, the Highly Confidential Version, and the Third Party Highly Confidential Version via E-mail)

Respectfully submitted,

Michael J. Hunseder

**PUBLIC VERSION**

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | |
|---|---|
| **In the Matter of**<br><br>**AT&T CORP.**<br>**One AT&T Way**<br>**Bedminster, NJ 07921**<br>**(303) 299-5708**<br><br>***Complainant,***<br><br>***v.***<br><br>**IOWA NETWORK SERVICES, INC.**<br>**d/b/a Aureon Network Services**<br>**7760 Office Plaza Drive South**<br>**West Des Moines, IA 50266**<br>**(515) 830-0110**<br><br>***Defendant.*** | **Proceeding Number 17-56**<br>**File No. EB-17-MD-001** |

**REPLY LEGAL ANALYSIS IN SUPPORT OF**
**FORMAL COMPLAINT OF AT&T CORP.**


Letty Friesen
AT&T SERVICES, INC
161 Inverness Drive West
Englewood, CO 80112
(303) 299-5708
(281) 664-9858 (fax)

James F. Bendernagel, Jr.
Michael J. Hunseder
Spencer Driscoll
Morgan Lindsay
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8000
(202) 736-8711 (fax)

Brian A. McAleenan
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
(312) 853-7000
(312) 853-7036 (fax)


Dated: July 5, 2017

*Counsel for AT&T Corp.*

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Page(s)**

**Cases**

**Statutes**



**Regulations**

## INTRODUCTION

In response to AT&T's Complaint, Iowa Network Services, d/b/a Aureon Network Services ("INS") makes several critical admissions that establish INS's liability on several issues. Further, the affirmative defenses that INS raises in response to AT&T's Complaint all lack merit.

**1.** AT&T's first argument is that INS's tariff applies only to "the provision of Centralized Equal Access ("CEA") Service," AT&T Ex. 3, and not to access stimulation traffic, which is not comparable to the CEA services covered by the tariff and authorized by the Commission thirty years ago. In response, INS flatly concedes that its "CEA service is not one that is comparable to [other carriers'] access service." INS Answer to the Formal Complaint of AT&T Corp., Exhibit A, Declaration of Jeff Schill ¶ 5 (filed Jun. 28, 2017) ("Schill Decl."); *see also, e.g.*, INS Answer to the Formal Complaint of AT&T Corp. ¶ 46 (filed Jun. 28, 2017) ("INS Answer"). That confirms AT&T's point: the scope of INS's tariff is limited to a specialized access service, designed primarily to address equal access on very low volumes of originating traffic from independent ILECs. If INS wanted to bill tariffed charges for other types of access services, particularly ones involving very high volumes of terminating traffic to CLECs, it needed to amend its tariff or file a new tariff that covered access stimulation traffic, and to adjust the applicable rate to reflect the lower costs that the Commission has required for access stimulation.

INS argues that the scope of its tariff is broader than CEA service, but it primarily relies on a provision stating that, on CEA traffic, INS will route calls from its tandem switch over transmission facilities to the subtending carrier's end office switch. Such a provision does not address the scope of the tariff, but explains what routing function INS will perform on the CEA services encompassed by the tariff. Those same functions are performed by INS on *intra*state calls, and yet it is obvious that INS could not rely on this tariff provision to bill for intrastate access service, because the scope of its FCC Tariff No. 1 is limited to interstate service. In the same manner, the scope of INS's tariff is limited to CEA service, and cannot be read to apply to access stimulation traffic in light of the conceded differences between the services.

INS also makes the astounding claim that the scope of its tariff is essentially irrelevant, and that IXCs *must* use INS's services on all the disputed calls, because the Commission in 1988 forever awarded INS a *de jure* monopoly by prohibiting any alternative transport routes to any other carriers that INS elects to serve. This argument (as well as INS's related res judicata/collateral estoppel defense) is nonsense. Carriers no longer have *de jure* monopolies over local telephone service—and certainly any such monopolies could not have been extended to all transport INS provides to the *competitive* LECs that were introduced to end local telephone monopolies.

Equally absurd is INS's contention (and affirmative defense) that AT&T engaged in improper and even "fraudulent" conduct by asking access stimulation CLECs for direct connect service that would bypass INS. *See, e.g.*, Legal Analysis in Support of the Answer of INS, at 1–2 (filed Jun. 28, 2017) ("INS Legal Analysis"). To begin with, the record establishes that bypass by CLECs has been common, *e.g.*, Formal Complaint of AT&T Corp., Declaration of John W. Habiak, ¶ 30 (filed Jun. 8, 2017) ("Habiak Decl."); *see also* INS Answer, ¶ 111, and yet INS never before took steps to enforce this supposedly unlawful activity. Further, the CLECs with which AT&T interacted are obligated to provide direct connections;[1] at the very least, the Commission has determined that CLECs should "permit an IXC to install direct trunking from

[1] *See* AT&T Ex. 8, Formal Complaint of AT&T Corp., *AT&T Corp. v. Great Lakes Commc'ns Corp.*, Docket No. 16-170, File No. EB-15-MD-001 (filed Aug. 16, 2016).

the IXC's point of presence to the competitive LEC's end office, thereby bypassing any tandem function." *In re Access Charge Reform*; *PrairieWave Telecomms., Inc.*, 23 FCC Rcd. 2556, ¶ 27 (2008) ("*PrairieWave*"). AT&T's mere request for an alternative service that CLECs should provide or permit is plainly not improper or unlawful. *Cf.* 47 U.S.C. § 201(a).

**2.** AT&T's second argument is that INS violated the Commission's rate cap and rate parity rules by raising its CEA tariffed rate in 2013, and by not ever lowering its intrastate CEA rate. As AT&T explained, the rules apply to "all" switched access service and to "any" LEC. Compl. § III. In response, INS concedes that it provides switched access service and exchange access service (INS Answer ¶¶ 92–94, 96–97)—which is what defines an entity as a LEC (47 U.S.C. § 153(32); 47 C.F.R. § 51.5; 47 C.F.R. § 51.903(a)). Indeed, INS's position on this issue is wholly inconsistent; it affirmatively claims that it can file streamlined tariffs under Section 204(a)(3) of the Act—a provision that by its terms applies only to LECs—and yet INS denies that it is a LEC. INS cannot have it both ways.

INS's principal defense to AT&T's claim that it is subject to the Commission's rate cap and rate parity rules is that INS is regulated pursuant to Section 61.38 of the Commission's rules, and that the rate cap and rate parity rules must "give way" to Section 61.38. INS Legal Analysis at 14. In fact, there is no conflict between these sections, but even if there were, the Commission's rate cap and rate parity rules expressly provide that they apply "[n]otwithstanding any other provision of the Commission's rules," *e.g.*, 47 C.F.R. § 51.911, and thus INS must follow the rate cap and rate parity rules.

**3.** AT&T's third argument is that INS is engaged in access stimulation but has not filed revised tariffs to conform its rates to the lower levels the Commission required. In response, INS concedes (INS Answer ¶¶ 106–07) that the evidence of INS's traffic patterns (around 10 times more terminating traffic than originating) establishes a rebuttable presumption that "revenue sharing is occurring and [INS] has violated the Commission's rules." *In re Connect Am. Fund,* 26 FCC Rcd. 17663, ¶ 699 (2011) ("*Connect America Order*"). INS argues that it rebutted this presumption, but it has failed to make the required minimum showing: INS has not provided the required certifications from the access stimulation CLECs to which INS transports all of its access stimulation traffic (*see id.*).

INS also argues that the access stimulation rules do not apply to INS or other intermediate transport providers, but the Commission's rules contain no such exclusion—in fact, the Commission expressly declined in 2011 to include one. *Connect America Order,* ¶ 671. INS also argues that it is not a party to revenue sharing agreements. However, INS misreads the Commission's definition of such agreements; the definition encompasses agreements in which INS makes a net payment of any "item[] of value, *regardless of form*." 47 C.F.R. § 61.3(bbb). The evidence clearly shows that INS provides an item of value to the access stimulation CLECs at no charge, and thus makes a net payment.

INS also asserts, throughout its Answer, that the Commission has consistently treated INS and other CEA providers as different from other carriers, due to the specialized nature of the CEA services they provide. As noted above, that position supports AT&T's tariff argument, and more fundamentally, INS's claim that its CEA service makes it *sui generis* ignores that INS voluntarily changed its business model: while it once provided only legitimate CEA services, INS now provides upward of 90 percent of its switched access service on CLEC access stimulation traffic. Habiak Decl. ¶ 16. INS was not obligated to carry the CLECs' access stimulation traffic—it willingly chose to do so. Once it did, and the Commission put rules in place both to cap all switched access charges and to address and curtail access stimulation, INS was obligated to conform its conduct to those rules. INS did not do so, and its claims that it is shielded from the Commission's 2011 reforms because of its specialized services ring hollow in light of INS's choice to facilitate and actively participate in access stimulation schemes.

**4.** AT&T's fourth argument is that INS manipulated its CEA rates through a variety of improper accounting measures, some of which INS "furtively concealed" in its public filings. In response, INS offers no new information to support its ratemaking methodologies, and its position seems to be that, so long as it followed the applicable procedures, the Commission and its customers should accept its assurances that its CEA rates are reasonable. That is not the law, and the evidence shows that INS has manipulated its rates—in fact, the declaration by Mr. Schill that INS submitted in support of its position raises more questions than it answers.

In short, INS's response to AT&T's Complaint confirms that INS has not properly filed tariffs that are applicable to access stimulation traffic or that contain the reduced rates the Commission required for such traffic (or for switched access services generally). As such, INS cannot collect the tariffed charges it billed to AT&T on access stimulation traffic. Further, AT&T is entitled to refunds on amounts that INS improperly charged and collected from AT&T.

## ARGUMENT

### I. INS'S CEA TARIFF DOES NOT APPLY TO ACCESS STIMULATION TRAFFIC, AND THEREFORE INS VIOLATED SECTIONS 201 AND 203 BY BILLING AT&T FOR ACCESS STIMULATION TRAFFIC UNDER THAT TARIFF.

#### A. AT&T Has Shown That Access Stimulation Traffic Is Not CEA Traffic Under INS's Tariff, And INS Has Not Rebutted That Showing.

As explained fully in AT&T's Complaint and Legal Analysis, INS's billing of CEA service and rates to AT&T on access stimulation traffic is inconsistent with the terms of its CEA tariff, and thus violates Sections 201 and 203 of the Act.[2] Although the term "Centralized Equal Access Service" appears on the title page and literally every page of the tariff, INS's CEA tariff contains no definition for that term. In the absence of a tariff definition, for guidance on the meaning of that term, one must look to the Commission's rulings that approved INS and other CEA arrangements (AT&T Legal Analysis, Part I.A at 6)—a proposition INS does not challenge. The Commission's CEA rulings in the late 1980s and early 1990s describe a narrow service, intended to facilitate the provision of equal access by small rural LECs with low volumes of traffic. As such, the scope of INS's tariff is limited to "the provision of" this narrow, specialized service.[3] Because access stimulation traffic is far different from legitimate CEA service – a proposition that INS also does not contest (Schill Decl. ¶ 5 ("CEA service is not one that is comparable to access service that is provided by other carriers"); INS Answer ¶ 46)[4] – INS's provision of switching and transport on access stimulation traffic is not covered by INS's CEA tariff. AT&T Legal Analysis, Part I.A.1 at 7-9.

---

[2] *See* Legal Analysis In Support of Formal Complaint of AT&T, Part I.A at 4-19 (filed June 8, 2017) ("AT&T Legal Analysis").

[3] AT&T Ex. 3, INAD Tariff F.C.C. No. 1, at Original Title Page (filed Aug. 10, 1988).

[4] AT&T has identified at least four ways in which access stimulation differs from the legitimate CEA encompassed within INS's tariff. *First*, CEA was established to provide for equal access for placing long distance calls. The conference companies partnering with access stimulating CLECs have no need for 1+ dialing or equal access. *Second*, CEA was established to aggregate low volumes of traffic bound for numerous widely-dispersed LECs. Access stimulation is the exact opposite: it entails sending very high volumes of traffic to a single CLEC. *Third*, the Commission assumed CEA traffic would be relatively balanced between both originating and terminating traffic and interstate and interstate traffic, and that "the majority of the networks' costs would be recovered from intraLATA toll calls." *In re Application of Iowa Network Access Div.*, 3 FCC Rcd. 1468, ¶ 32 (C.C.B. 1988) ("*INS Order*"). Virtually all access stimulation traffic is terminating, interstate traffic. *Fourth*, CEA was established to allow a large number of different LECs, and their end users, to be served by multiple IXCs, but access stimulation traffic is routed to a limited number of high volume telephone lines assigned to a limited number of chat and conference companies, which share nothing in common with ordinary rural customers. *See* AT&T Legal Analysis, Part I.A.2 at 10-12. INS challenges none of those four points.

Additionally, in its *Alpine* decision, the Commission explained that tariffs must be interpreted to "advance the purpose for which the tariff was imposed," and that the "creation of INS" was meant "to *lower* the cost of transporting traffic from [INS's tandem] to the various rural exchanges." *AT&T v. Alpine Commc'ns*, 27 FCC Rcd. 11511, ¶ 29 (2012) ("*Alpine*"). AT&T has demonstrated that there are at least three alternatives for terminating access stimulation traffic, each of which costs only a fraction of INS's tariffed CEA service. Compl., Part II.A.2. Those savings provide yet another reason not to interpret INS's CEA tariff to encompass access stimulation traffic. INS does not challenge these points either.[5]

In sum, INS offers no effective counter to AT&T's showing that INS's CEA tariff does not encompass access stimulation traffic. Each of INS's four arguments advanced in support of its position that its CEA tariff covers access stimulation traffic, addressed below, lacks merit.

### 1. Section 6.1 of INS's tariff, which concerns "Switched Access Service," does not expand the meaning of CEA service, or the scope of INS's CEA tariff, to cover access stimulation traffic.

INS invokes Section 6.1 of its tariff, titled "General" and falling under Section 6 "Switched Access Service,"[6] which provides in pertinent part:

> Switched Access Service, when combined with the services offered by Exchange Telephone Companies, is available to Customers. Iowa Network provides a two-point electrical communications path between a point of interconnection with the

[5] In its Answer, INS denies that the creation of INS was meant to lower *AT&T's* costs, and claims that only AT&T's competitors were meant to enjoy lower costs. INS Answer ¶¶ 35, 76. But *Alpine*, in which the Commission ruled in AT&T's favor, shows that the cost savings rationale does extend to AT&T. Further, INS does not, and cannot, deny that other IXCs must also deliver access stimulation traffic, and that the financial benefits and the cost-saving alternatives AT&T identified, are equally available to other IXCs. A ruling for AT&T here would thus not result in "discrimination" or a "preferential rate" in favor of AT&T as INS contends (*e.g.*, INS Answer ¶ 48), but would benefit all IXCs in the same way.

[6] In its Legal Analysis, INS misleadingly introduces Section 6.1 as "clearly stat[ing] that <u>CEA</u> service" comprises the routing described in that Section. INS Legal Analysis at 21 (emphasis added). But as noted, that section does not define or reference *CEA* service; rather, it references only "Switched Access Service."

> transmission facilities of an Exchange Telephone Company at a location listed in Section 8 following and Iowa Network's central access tandem where the Customer's traffic is switched to originate or terminate its communications. It also provides for the switching facilities at Iowa Network's central access tandem.

AT&T Ex. 3, INAD Tariff F.C.C. No. 1, § 6.1, p. 88. INS argues that, because all AT&T calls—both access stimulation and legitimate CEA traffic—delivered to INS for termination were (i) switched at the INS tandem and (ii) transported from the tandem to the network of the terminating LEC, the "service that was provided and billed to AT&T was CEA service as defined in the tariffs." INS Legal Analysis at 21. INS's argument is wide of the mark.

Section 6.1 does not address the scope of INS's tariff. The CEA tariff's title page states that it contains the "Regulations, Rates and Charges applying to the provision of interstate Centralized Access Service within the certified operating territory of" INS, and the header of every page of the tariff is labeled "Centralized Equal Access Service." AT&T Ex. 3, INAD Tariff F.C.C. No. 1, Original Title Page, *et seq*. Accordingly, the tariff concerns "Centralized Equal Access Service," and "Switched Access Service" in Section 6.1 merely confirms that CEA service is a type of switched access service and describes the functions that INS will perform in connection with legitimate CEA traffic. Nothing in Section 6.1 addresses the meaning or scope of CEA service as described in the Commission's Orders authorizing INS and other CEA providers, let alone indicates that CEA service, or INS's tariff, encompasses access stimulation traffic.

Confirming that Section 6.1 of INS's does not describe CEA service, similar language describing a "two point" connection between a tandem switch and the network of a LEC appears in the tariffs of other LECs, for example in Section 6.1 of Qwest's switched access tariff.[7] And, like INS, Qwest provides IXCs with, and charges IXCs for, tandem switching and transport to and from LEC end offices that are not Qwest end offices. Yet, Qwest of course is not a CEA provider. As such, while the language in Section 6.1 of INS's tariff describes the routing and functions that INS performs when providing legitimate CEA service, that language does not mean that anytime INS performs that routing function, it is providing CEA service under its tariff. If that were true, then many other LECs would be providing CEA service whenever they route calls from their tandem switch to the end office of a subtending carrier. But that is simply not true, and INS does not contend otherwise—to the contrary, it argues that its CEA service is different from other LECs' access services. Schill Decl. ¶ 5 ("CEA service is not one that is comparable to access service that is provided by other carriers"); INS Answer ¶ 46 ("CLECs are governed by different tariffs ... than the tariffs ... applicable to CEA providers like Aureon").

As a further illustration of this point, on *intrastate* calls, INS also provides the same "two-point electrical communications path" between the subtending carrier "and Iowa Network's central access tandem" described in Section 6.1. AT&T Ex. 3, INAD Tariff F.C.C. No. 1, § 6.1, p. 88. But, just as INS's tariff is limited to the provision of CEA service, the scope of INS's F.C.C. Tariff No. 1 is also confined to interstate traffic, and INS plainly could not rely on Section 6.1 to bill IXCs for intrastate traffic, even though INS performs the functions described in Section 6.1 when routing intrastate traffic. *Id.* at Original Title Page ("Regulations, Rates and Charges applying to

[7] *E.g.*, AT&T Ex. 83, CenturyLink Communications, L.L.C., Tariff F.C.C. No. 11, § 6.1 ("Switched Access Service … provides a two-point electrical communications path between a customer's premises and an end user's premises via a LEC tandem"). *See also id*. § 6.1.2.A.1, 1st Rev. Page 6-18 (General Description of Switched Transport) ("Switched Transport is a two-way voice-frequency transmission path," which for "tandem routed traffic" is composed of, *inter alia*, "an access tandem and Tandem-Switched Transport (TST) from the access tandem to the subtending end offices"). Similar language can be found in the tariffs of many other LECs.

the Provision of interstate Centralized Equal Access Service within the certified operating territory of Iowa Network Access Division in the State of Iowa") (emphasis added).

Rather than Section 6.1, the scope of INS's Tariff No. 1 is defined by the Title Page (*i.e.*, the tariff is limited to the provision of CEA service) and the ubiquitous references to CEA service throughout the tariff (as well as the omission of coverage of access stimulation traffic, except until very recently, when INS made clear that access stimulation traffic was "not like" CEA service).[8] As AT&T has explained, the scope of INS's CEA tariff is limited to the provision of CEA service, and because "CEA service" is not defined in the tariff, the tariff's scope is limited to the provision of CEA service, as that term is commonly understood. As further explained by AT&T and not contested by INS, CEA service is not at all similar to access stimulation traffic. INS's Section 6.1 argument fails.

**2. The inclusion of Great Lakes and other access stimulating CLECs as "Routing Exchange Carriers" under the tariff does not expand the scope of CEA service or INS's tariff to cover access stimulation traffic.**

INS also contends that, because its CEA tariff mentions the transfer of traffic to and from "Exchange Telephone Companies" and Great Lakes and other access stimulating CLECs are listed in the tariff as "Exchange Telephone Companies," the tariff must be construed to encompass "all traffic associated with" such CLECs. INS Legal Analysis at 21-22. This similar argument—which

[8] AT&T Ex. 46, Transmittal No. 33, INS, Revisions to Tariff F.C.C. No. 1, § 7.1.1 (filed Apr. 14, 2017). INS attempts to avoid the impact of that admission by noting that the contract tariff filing submitted with Transmittal No. 33 did not go into effect. (*E.g.*, Answer ¶ 74.) But the issue is not whether the contract tariff went into effect, it is whether INS's statement that transport and switching of access stimulation traffic is "not like" CEA traffic was correct; INS does not assert that its statement was wrong. INS also points to its "volume discount" as proof that the tariff covers access stimulation. (*Id.*) AT&T has addressed that offering (AT&T Legal Analysis Part I.A.3), which INS first made 12 years and many billions of minutes after INS began carrying access stimulation traffic, and which does not provide a definition for CEA service that includes access stimulation or otherwise impact the scope of INS's tariff.

AT&T addressed in its Legal Analysis (AT&T Legal Analysis, Part I.C.3 at 23-24)—fails for a similar reason: naming Great Lakes and other access stimulating CLECs as "Exchange Telephone Companies" (or "Routing Exchange Carriers") does not expand the scope of CEA service, or INS's tariff, to encompass access stimulation traffic.

Even assuming *arguendo* that INS's tariff covers legitimate CEA traffic delivered to CLECs (as opposed to only the independent incumbent telephone companies that created and own INS and that have traffic with the characteristics associated with legitimate CEA service), that does not mean that INS's tariff also covers access stimulation traffic. Adding certain carriers as "Routing Exchange Carriers" / "Exchange Telephone Companies" in no way impacts the scope of the tariff, which remains confined to the provision of "Centralized Equal Access Service" as described in INS's tariff and the Commission's authorizing Orders. In other words, while listing Great Lakes as an "Exchange Telephone Company" might entitle INS to charge for delivering to Great Lakes any legitimate CEA traffic that falls within the scope of the tariff, it cannot permit INS to charge AT&T for any and all traffic delivered to Great Lakes. INS can only bill for traffic within the scope of the tariff. AT&T Legal Analysis, Part I.A.3 at 14, n.19. At bottom, the scope of INS's tariff is limited on its face (and on every other page) to the provision of "CEA service," and adding the name of a carrier, even one known to engage in access stimulation, does not alter the scope of INS's tariff as encompassing only the provision of CEA service to the listed carriers.[9]

Finally, the fact that INS performs the switching and transport functions on access stimulation traffic, and the calls are completed (INS Legal Analysis at 20, 22), does not justify imposing tariff charges on such calls. The Commission's *Farmers* decision forecloses that

[9] At the very best, listing Great Lakes and other access stimulating CLECs in the tariff might create some ambiguity regarding the scope of the tariff, but any ambiguity would have to be construed against INS. *See Alpine* ¶ 27.

argument. In *Farmers*, there was no dispute that the calls reached their destination in the same functional manner as used for genuine access traffic. But the Commission still concluded that, because the conference and chat conference companies did not pay a fee for telecommunications service as required by the tariff, they were not "end users" and therefore the traffic was not access traffic that could be properly billed under the tariffs. *Qwest Commc'ns v. Farmers & Merchs. Mut. Tel. Co.*, 24 FCC Rcd. 14801, ¶¶ 1, 10-12 (2009) ("*Farmers*"), *recon. denied*, 25 FCC Rcd. 3922 (2010), *aff'd*, *Farmers & Merchs. Mut. Tel. Co. v. FCC*, 668 F.3d 714 (D.C. Cir. 2011). In short, INS (like Farmers) is bound by the terms of its tariff, which is limited in scope to CEA sercice and does not encompass access stimulation traffic. *Farmers* ¶ 21 (LECs are bound by the terms and definitions in their tariffs, and the Commission "will not expand" those terms "as used in the tariff before us to encompass more than the tariff itself delineates").

**3. INS's argument that its CEA tariff covers both originating and terminating traffic attacks a strawman—AT&T argues that the INS tariff is deficient because it does not cover access stimulation traffic, not because it does not cover terminating traffic.**

INS asserts that its tariff covers both originating and terminating traffic, and therefore covers access stimulation traffic, which is almost exclusively terminating traffic. INS Legal Analysis at 22. INS's argument is entirely beside the point. AT&T has never argued that the INS CEA tariff does not encompass any terminating traffic. Rather, AT&T argues that INS's tariff is limited to the provision of CEA service, and does not encompass access stimulation traffic. AT&T Legal Analysis, Part I. It is true that 1+ dialing and the equal access function exclusively concern originating traffic, and AT&T relied on that fact, among others, to point out the many significant differences between legitimate CEA service, which comes within the scope of INS's tariff, and access stimulation traffic, which falls outside the tariff. Simply because INS's CEA tariff includes the terminating calls placed to the end users of LECs with legitimate CEA traffic does not mean that it includes *all* types of terminating access traffic, including access stimulation traffic that is *entirely* terminating in nature and that bears no resemblance to legitimate CEA service.

#### 4. INS's argument that references to "all" terminating traffic in INS's authorizing Orders and the rules regarding rate submissions include CEA traffic are unavailing.

INS contends that it is authorized to provide, and its tariff covers, access stimulation traffic because the authorizations from the Commission and the Iowa Utilities Board ("IUB") include references to "all" terminating traffic, and because Section 61.38 of the Commission's rules requires inclusion of "all" minutes of use in setting rates, with no exclusion for access stimulating traffic. INS Legal Analysis at 24. INS's arguments are off base.

As AT&T has explained, the Commission and IUB authorizations of INS cannot be interpreted to include access stimulation traffic bound for CLECs because they were issued in 1988, "prior to the very existence" (INS Answer, ¶ 112) of access stimulation (or CLECs).[10] Therefore, the key fact is not the absence of an express *exclusion* for access stimulation traffic, but rather the absence of an express *inclusion* of access stimulation traffic (either in INS's authorization or in its tariff) after access stimulation emerged in Iowa and after the Commission put rules in place to address access stimulation.

As for Rule 61.38, it is irrelevant because it has nothing to do with the scope of CEA service or the scope of INS's CEA tariff. Indeed, that rule concerns the information supplied with rate submissions of any dominant carrier, and nowhere even mentions CEA service. 47 C.F.R. § 61.38. As such, that rule does not purport to define the scope of INS's CEA tariff or any other tariff, but rather necessarily assumes that only the minutes encompassed by the subject tariff are included for

[10] The IUB authorization is also irrelevant because it necessarily concerns only intrastate traffic, and most of the traffic at issue here is interstate.

rate-making. Any other conclusion would produce absurd results, such as the inclusion of intrastate or non-CEA traffic carried by INS (such as Internet traffic) among the traffic used to set rates for interstate CEA service. And, indeed, the rule requires no such thing.[11] *Id.*

At bottom, INS asks the Commission to find that its approval of INS's CEA service in 1988 granted INS *carte blanche* to deliver traffic to new LECs or other entities not included in the original application, and to carry (and impose charges for) any type of traffic on its CEA network. INS is wrong. Notably, in 1988, INS asked for "Section 214 to serve [independent telephone companies ("ITCs")] that may choose to utilize its services in the future." *INS Order* ¶ 2. That request, which was limited to ITCs, was *denied*, with the Commission stating that INS could "avail itself of our informal applicable procedures." *Id.* ¶ 2, n.6. The Commission also stated in *Indiana Switch* that any arrangement that differed from the one approved in Indiana, or imposed costs without offsetting benefits, would have to be considered separately. *In re Application of Ind. Switch Access Div.*, File No. W-P-C-5671, 1986 WL 291436, ¶ 23 (F.C.C Apr. 10, 1986) ("*Indiana Switch C.C.B. Order*"). The Commission therefore did not afford INS blanket approval to offer CEA service to new LECs, and INS offers no evidence that it applied for Commission approval to deliver traffic to Great Lakes or any of the access stimulating CLECs, or changed its tariff to permit such service.

In short, INS has filed a tariff that only covers the provision of CEA service, which is a narrow service designed for a limited purpose, and not "comparable" to other access services. Yet after filing this tariff in 1988, INS many years later willingly changed its entire business model, so that upwards of 90 percent of its switched access services related to access stimulation traffic.

---

[11] Rule 61.38 also includes references to "new" or "changed" services, which are recognitions that a carrier can provide multiple services, and that only the traffic within the scope of the particular service—here legitimate CEA service—is properly included in rate setting.

INS, however, never conformed its CEA tariff, or filed a new tariff. INS's argument that it was not necessary to do so because the Commission already had approved INS's CEA service is revisionist history. The Commission never authorized INS to carry any type of terminating traffic, and certainly did not approve of INS's participation in access stimulation. In fact, once the Commission (like the IUB) determined that access stimulation is a "wasteful" arbitrage scheme that should be "curtail[ed]," *Connect America Order* ¶¶ 33, 649, INS could not have reasonably believed that it had authorization to operate by carrying upwards of 90 percent access stimulation traffic.

### B. INS's Technical And Policy Arguments Lack Merit.

INS offers a number of technical and policy arguments for why it should be allowed to charge AT&T its CEA rates on access stimulation traffic. All such arguments suffer from two fundamental and fatal flaws. *First*, those arguments do not concern the language of the tariff, and therefore are inapposite. *Second*, as with many of the INS arguments addressed above, the arguments wrongly assume that AT&T is challenging INS's ability to impose any CEA charges at all, when in fact AT&T is challenging only the application of INS's CEA tariff to a particular type of traffic—access stimulation traffic—that is not like CEA traffic, and thus falls outside the scope of INS's tariff. INS's arguments are addressed below.

#### 1. The Access Service Requests ("ASRs") submitted by AT&T are not admissions that INS's CEA tariff encompasses access stimulation traffic or that AT&T agreed to pay CEA rates on such traffic.

INS notes that AT&T "ordered CEA service from [INS] by sending ASRs," and that INS "provided CEA service with the capacity to carry the volume of traffic that AT&T routed over the CEA network." INS Legal Analysis at 20-21. But submission of ASRs in no way obligates AT&T to pay INS its tariffed rates on access stimulation traffic when that service is not covered by its tariff.

INS does provide legitimate CEA service, but the submission of ASRs for legitimate CEA service does not authorize INS to impose tariffed charges on AT&T for any and all traffic, regardless of whether that traffic is covered by the tariff. Further, INS offers no evidence indicating that the ASRs AT&T submitted sought service, or capacity, beyond that for legitimate CEA service. But even if such evidence existed, it would prove nothing. The Commission's rules impose a duty on IXCs not to block traffic, and also can affirmatively obligate AT&T to augment capacity in certain circumstances to ensure that the calls are completed. *E.g.*, *In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, 22 FCC Rcd. 11629, ¶¶ 1, 5-6 (W.C.B. 2007); *Connect America Order*; *In re Developing an Unified Intercarrier Compensation Regime*, 27 FCC Rcd. 1351, ¶¶ 3, 11-12 (W.C.B. 2012). Thus, even after access stimulation became the predominate form of traffic carried by INS, AT&T was obligated to ensure that it had adequate facilities from INS so that calls would be completed. No inferences regarding AT&T's views on the applicability of INS's CEA tariff to access stimulation can be drawn from AT&T's submission of ASRs to INS.

**2. INS's assertion that smaller IXCs need its CEA network to reach rural Iowa LECs misunderstands AT&T's argument, which does not concern the ability of other IXCs to use INS's network for legitimate CEA service.**

INS contends that its CEA service "enables smaller IXCs competing with AT&T to connect at a single location in order to terminate their customers' calls to all of the exchanges of more than 200 LECs," and that reaching those LECs without INS would prove "an expensive task." INS Legal Analysis at 22. INS's argument is ill-founded in multiple respects.

*First*, AT&T is not arguing that other IXCs, or even AT&T itself, should not be able to use INS's network to reach rural LECs receiving legitimate, traditional CEA traffic. AT&T's directs its arguments at access stimulation traffic. INS's argument therefore attacks a strawman.

*Second*, INS has no evidence to suggest that the ability to terminate calls through INS has any impact today on the current state of long distance competition in Iowa. In fact, the long distance market is highly competitive: smaller IXCs have many wholesale options, and do not need to rely on direct connections with INS. INS relies upon the Commission's statements about relatively nascent long distance competition in Iowa in 1988, *INS Order* ¶ 3, but market conditions are plainly far different now.

*Third*, and relatedly, the Iowa Utilities Board recognized that INS's CEA service offered, at best, a limited benefit for terminating traffic:

> The terminating end creates special difficulties in designing rates for access charges. As the interexchange carriers have made clear in these proceedings, <u>INS is not providing substantial new services at the terminating end</u>. <u>Nothing akin to the centralizing function performed for originating traffic occurs for terminating traffic</u>. The only function which INS has been able to clearly identify which is a beneficial access service is the ticketing and recording of actual minutes of use, so the participating telephone companies will be able to accurately bill the interexchange carriers for access services. <u>The Board will not require interexchange carriers to bear the burden of INS terminating rates, except for that portion associated with ticketing and recording</u>.

*In re Iowa Network Access Div., Div. of Iowa Network Servs.*, RPU-88-2, 1998 Iowa PUC LEXIS 1, **19-20 (Iowa Utilities Board Oct. 18, 1988) ("*IUB Order*") (emphasis added). That passage, along with the Commission's Minnesota CEA Order that approved, and praised, a proposal in which the CEA provider would provide terminating service in competition with other carriers (AT&T Legal Analysis, Part I.C.4 at 25), refutes INS's insistence that termination is as important as origination for CEA traffic.

### 3. INS's argument that including access stimulation traffic keeps its CEA rate low for all carriers is unavailing.

INS asserts that, by including access stimulation within the scope of CEA traffic, CEA rates are kept low for all carriers, and that removal of such traffic would render CEA service "unaffordable for AT&T's smaller competitors." INS Legal Analysis at 23. INS's argument is unpersuasive for several reasons.

*First*, at its core, INS's argument is a request that the Commission condone the use of access stimulation—a "wasteful" arbitrage practice that harms consumers—to subsidize other services. The Commission's established policy rejects such implicit subsidies. *Connect America Order* ¶¶ 9, 663. In its *Connect America Order*, the Commission rejected the notion that purported benefits from expanding broadband or other services in rural areas justified excessive charges for access stimulation traffic. *See Connect America Order* ¶ 666.

*Second*, INS offers no evidence—only conjecture—that CEA rates would be too high absent access stimulation traffic. Undermining that conjecture, INS operated from 1988 to 2005 with rates of around $0.01 per minute (just about a tenth of penny higher than INS's current tariffed rates) without the inclusion of huge volumes of access stimulation traffic. And while legitimate CEA traffic has declined since that time, the impact of that decline on rates is countered by the full depreciation of the cost of INS's initial network build-out (*IUB Order* at *25 (identifying depreciation schedules of between 15 and 25 years)), and the use of the INS network for numerous services other than CEA. Finally, at least one other CEA provider, **[[BEGIN 3RD PARTY HIGHLY CONFIDENTIAL]]** [redacted] **[[END 3RD PARTY HIGHLY CONFIDENTIAL]]**

12 **[[BEGIN 3RD PARTY HIGHLY CONFIDENTIAL]]** [redacted]

Third, to the extent that INS has invested heavily in its network to accommodate the large volumes generated by access stimulation, INS cannot justly demand that AT&T and other IXCs pay for that imprudent decision. As discussed in Section IV, *infra*, for the period beginning in 2012, INS has told the Commission that it has invested many millions of dollars in its CEA network. During that time, as INS acknowledges, the level of legitimate CEA traffic was falling. As for the access stimulation calls that represent the vast bulk of INS's traffic, the Commission had already declared (in its November 2011 *Connect America Order*) that access stimulation is a "wasteful" arbitrage practice that harms consumers and would be "curtailed." Any decision by INS to invest huge sums in its CEA network in that environment cannot be excused. If INS is or were to suffer financial difficulties, they would be due to INS's own decisions.

**4. INS's argument that the Commission established INS as a Section 201(a) "through route" is incorrect.**

INS points to Section 201(a)'s obligation to establish "through routes," asserts that the Commission "conduct[ed] a Section 201(a) hearing" as part of the INS approval process, and concludes from that premise that its CEA tariff covers access stimulation and requires AT&T to pay its tariffed rate on such traffic. INS Legal Analysis at 19-20. INS's premise is wrong, and so is its conclusion.

As an initial matter, again, INS cannot point to the Commission's approval of INS in 1988 as authorizing it to charge CEA rates on access stimulation traffic, whether as a Section 201(a)

---

[redacted] **[[END 3RD PARTY HIGHLY CONFIDENTIAL]]** "through route" or on any other basis, because access stimulation did not exist at that time. Beyond that, however, it is simply not true that the Commission established INS as a "through route." The Commission did not conduct a "Section 201(a) hearing" as part of INS's Section 214 application—indeed, that *Order* nowhere mentioned Section 201(a). *See generally INS Order*. Accordingly, INS's Section 201(a) argument collapses because its foundation is wholly lacking.

#### 5. Any "mandatory use" requirement does not justify applying CEA rates to access stimulation traffic.

INS argues that the so-called "mandatory use" requirement demands that its CEA rate be applied to access stimulation traffic. INS Legal Analysis at 1-5. But as AT&T has explained (AT&T Legal Analysis, Part I.C.4 at 24-28), that requirement arguably no longer survives at all. Further, because CEA service as described by the Commission, and thus INS's tariff, does not extend to access stimulation traffic, any "mandatory use" requirement that existed has never been extended to such traffic. Further proving that point, CLECs in Iowa and other CEA states routinely elect to connect to IXCs through other carriers, such as Qwest. (*Id.*, n.26.) The "mandatory use" requirement for access stimulation is also inconsistent with the obligation to install or accept direct connects under the Commission's access stimulation rules and *PrairieWave* decision, the *Indiana Switch* decision that requires an independent determination of the appropriateness of any CEA arrangement that differs from the ones initially approved (and increases costs with no benefits) and INS's own recent tariff filings that singled out access stimulation traffic for special treatment.[13] AT&T Legal Analysis, Part I.C.4 at 26-28.

At bottom, INS's position is that it has a *de jure* monopoly for terminating access service to the CLECs and ICOs in Iowa that have contracted with INS. But the 1996 Telecommunications Act ended such monopolies for local service. Moreover, INS defends its exclusive arrangements with LECs by pointing to the approval received from the Iowa Utilities Board for its original ICO agreements, and the Iowa Supreme Court's affirmation of that approval. (*E.g.*, INS Answer ¶ 81; INS Legal Analysis at 24-25.) Importantly, however, the Iowa Supreme Court stressed that exclusive arrangements are permissible only for a "reasonable" period of time, and found the "INS contracts with the PTCs are each for five years; we do not deem this to be an unreasonable period." *N.W. Bell. Tel. Co.* v. *I.U.B.*, 477 N.W.2d 678, 686 (Iowa 1991). INS has now been operating for nearly 30 years, well beyond any "reasonable" period for exclusivity.

### C. AT&T's Position Is Not That INS Must Discontinue Its CEA Service, It Is That INS Must Alter Its Approach To CEA Service And Access Stimulation.

As noted above, INS repeatedly mischaracterizes AT&T's position as demanding that INS cease providing CEA service, or cease providing it on terminating traffic, altogether. But AT&T contends no such thing. AT&T's arguments as to the scope of INS's CEA tariff focus on INS's decision to carry and bill for large volumes of access stimulation traffic. In particular, AT&T

[13] INS goes so far as to accuse AT&T of wrongdoing (*i.e.*, "violating" the mandatory use requirement) for simply *asking* Great Lakes and other access stimulating CLECs to direct connect. INS Legal Analysis at 4-5. Those charges are easily brushed aside for several reasons. First, as explained above, there has never been any "mandatory use" requirement for access stimulation traffic, so AT&T cannot possibly violate such a requirement by seeking direct connects for access stimulation. Second, in all events, AT&T made requests, but CLECs have not yet agreed. Indeed, the CLECs' refusals reflect *INS's* wrongdoing in preventing the CLECs' from the providing the direct connects they are duty-bound to provide. Third, INS has brought no claims against AT&T, so the accusations are simply empty rhetoric.

contends that when access stimulation began in earnest in Iowa in 2005, INS had the following three choices.

One, INS could have left its tariff as it was, and chosen not to sign traffic agreements with access stimulating CLECs.

Two, INS could have filed a new tariff that covered access stimulation traffic, at a rate that was appropriate, just and reasonable for access stimulation traffic. That is essentially the path the IUB imposed for access stimulating CLECs with its High Volume Access Service reforms. *See In re High Volume Access Service*, RMU-2009-0009, 2010 Iowa PUC LEXIS 194 (June 7, 2010).

Three, INS could have modified its tariff to cover access stimulation traffic, and then significantly lowered its CEA rate for access stimulation traffic (or potentially all traffic). In this regard, INS's recent tariff filings reflect a recognition that its existing CEA tariff is not suitable for access stimulation traffic, although the identified rates are not nearly low enough. AT&T Legal Analysis at 1, 28. Indeed, if INS remains involved with access stimulation, the proper rate—based on both the Commission's benchmarking rules and the economic principles behind proper rate-making—is the Qwest direct connect rate. *E.g.*, AT&T Complaint ¶ 77.

Instead of one of those valid options, INS chose to bill AT&T its CEA rates on access stimulation traffic that its CEA tariff did not cover. As such, INS violated Sections 203 and 201(b) of the Act for the reasons explained fully in AT&T's Complaint and Legal Analysis.

## II. INS'S DEFENSES OF ITS UNLAWFULLY TARIFFED ACCESS RATES LACK MERIT.

In its Complaint and Legal Analysis, AT&T demonstrated that INS unlawfully filed tariffs for switched access services that violate the Commission's rate cap and rate parity rules. AT&T explained that those rules broadly applied to "all" interstate switched access services, provided by "any LEC." *See* Compl. ¶¶ 86-98; AT&T Legal Analysis Part II.A (citing, *inter alia*, *Connect*

*America Order*, ¶¶ 798, 800-01 and 47 C.F.R. §§ 51.903, 51.909-911). Despite those rules, INS's interstate tariff contains a rate that exceeds the rate cap, and INS has never reduced its intrastate rate to be in parity with its capped interstate rate. Compl. ¶¶ 99-101; AT&T Legal Analysis Part II.B.

In response, INS concedes that (1) it provides (and has filed tariffs for) "exchange access service" and, specifically, "switched access service," (INS Answer ¶¶ 92-94); (2) it meets the statutory definition of "LEC" in Section 3 of the Communications Act (47 U.S.C. § 153(32)) (INS Answer ¶¶ 96-97); and (3) "it did not cap its tariff rates" (*id.*, ¶ 57). INS's Answer thus confirms that INS's interstate and intrastate access tariffs were filed in violation of the Commission's rate cap and rate parity rules. 47 C.F.R § 51.905(b). As a consequence, INS violated Sections 201(b) and 203, its tariffs are unlawful and void, and INS may not lawfully collect the rates contained in those tariffs. AT&T Legal Analysis, Part II.B; *Security Servs., Inc. v. K Mart Corp.*, 511 U.S. 431, 444 (1994). INS offers several arguments to defend its violations and the unlawful, above-cap rates in its tariffs, but INS's arguments lack merit.

### A. The Commission's Rate Cap and Rate Parity Rules Are Not Inconsistent With Or Trumped By The Commission's Dominant Carrier Tariff Rules.

INS's primary argument is (i) that it is a dominant carrier regulated pursuant to Section 61.38 (47 C.F.R. § 61.38), (ii) that AT&T's interpretation of the rate cap and rate parity rules is inconsistent with Section 61.38, and (iii) that the rate cap and rate parity rules "must give way" to Section 61.38. *See* INS Legal Analysis at 6-14, 17-18. INS's claims are incorrect.

Preliminarily, as AT&T demonstrated in Part III of its Legal Analysis, INS elected to engage in access stimulation with various CLECs, and, as a consequence, it is appropriate to treat INS as a "CLEC" for purposes of those rules. *See* AT&T Legal Analysis at 38-45. Because INS is properly treated as a CLEC under those rules, there is nothing at all inconsistent with requiring

INS to abide by the Commission's rate cap rules applicable to CLECs. However, even assuming *arguendo* that INS is not engaged in access stimulation (or would be classified as a rate-of-return LEC under those rules) and is subject to Section 61.38, INS is incorrect in arguing that the rate cap and rate parity rules are inapplicable to it.

*First*, contrary to INS's claims, *e.g.*, INS Legal Analysis at 13, there is nothing logically inconsistent with regulating a carrier under *both* Section 61.38 and the rate cap and rate parity rules. Section 61.38 specifies the "supporting … material" that dominant carriers should file with their tariff filings, which can vary depending on the type of filing. 47 C.F.R. § 61.38. When the carrier's underlying cost studies and other material support the rate filed in the tariff, then the tariff is generally permitted to go into effect. However, in 2011, as part of its reform of intercarrier compensation, and specifically its initial transition to "bill-and-keep" as the default compensation system, the Commission provided an additional layer of rate regulation, including the Commission's rate cap and rate parity rules. *Connect America Order* ¶¶ 798-801 (describing the purposes of the rate cap and rate parity rules). The rate cap and rate parity rules provide that, regardless of how a LEC determines the rates in its tariffs for switched access services (*e.g.*, via price caps, rate of return, or by benchmarking), those tariffed rates may not exceed the specified cap. *See Connect America Order* ¶¶ 798-801; 47 C.F.R. §§ 51.907-911.

After 2011, under this regime, a dominant, rate-of-return LEC would initially calculate its rates using the procedures set forth in Section 61.38. If the LEC's rates are below the caps, then the LEC may file tariffs with those rates (subject to the Act's remedies that the Commission and customers may take against such tariffs). If, however, the calculated rates are above the caps, then the LEC must file at (or below) the caps. 47 C.F.R. § 51.905(b) ("LECs who are otherwise required to file tariffs are required to tariff rates no higher than the default transitional rates specified by this subpart.”). The rate caps are a ceiling, and, contrary to INS’s claims (INS Legal Analysis at 13), those rate caps in no way “conflict” with, or need to be “harmonized” with Section 61.38. Nor does this interpretation of the rate cap and rate parity rules make Section 61.38 superfluous—a dominant, rate-of-return LEC must still follow those procedures when supporting any rate below the rate caps.

*Second*, and in any event, the plain text of the Commission’s rate cap and rate parity rules unambiguously provides that those rules apply in the event of any conflict with other Commission rules. The rate cap and rate parity rules are contained within the Commission’s overall transitional pricing rules for price cap LECs, rate-of-return carriers, and CLECs. 47 C.F.R. §§ 51.907-911. All of the Commission’s transitional pricing rules apply “[n]otwithstanding *any other provision* of the Commission’s rules.” 47 C.F.R. § 51.905 (emphasis added). As such, the Commission has already made clear, in the text of the rate cap and rate parity rules, that those rules are to be applied regardless of any other rules, which necessarily includes the Section 61.38 rule on which INS relies. These explicit provisions that start each of the Commission’s transitional pricing rules thus confirm that, if a dominant carrier’s rates calculated under Section 61.38 exceed the rate caps, then the rate caps apply “notwithstanding” the rate was determined pursuant to Section 61.38. 47 C.F.R. § 51.905; *see* 47 C.F.R. §§ 51.907-911.

As such, INS’s claims that the Commission should invoke various canons of construction in order to “harmonize” its rules and “give effect to the overall regulatory scheme,” INS Legal Analysis at 7, 13, are simply misplaced. The Commission has already expressly provided that, under its regulatory regime as reformed in 2011, the Commission’s transitional pricing rules—which include the rate cap and rate parity rules that INS violated—govern over any other rules. 47

C.F.R. § 51.905. Because the text and structure of the Commission's rules are clear and unambiguous, there is no need to resort to canons of statutory construction in these circumstances.

*Third*, INS's reliance on the Commission's 2016 *Technology Transitions Order* is unavailing.[14] In that order, the Commission granted a petition for declaratory ruling that ILECs are "non-dominant in their provision of interstate switched access services." *Technology Transitions Order* ¶ 4. Relying on a single sentence in a footnote in which the Commission declined to find CEA providers to be non-dominant, INS argues that the *Technology Transitions Order* (implicitly) excluded INS from the rate cap and rate parity rules.[15] However, in that same *Order*, the Commission reaffirmed that "[a]ll interstate switched access rate elements are capped." *Technology Transitions Order* ¶ 15.

According to INS, the "sole" reason for the Commission's non-dominance finding was the existence of the "rate caps," and, because the Commission did not extend its non-dominance finding to CEA providers, it must have implicitly concluded that the rate caps do not apply to INS and other CEA providers. INS Legal Analysis at 7. Nothing supports INS's inference, however. As an initial matter, INS is wrong that the Commission's non-dominance determination in the *Technology Transitions Order* relied solely on the existence of rate caps. Rather, that type of a determination (*i.e.*, that a carrier lacks market power) relies on a variety of factors about the market for the services in question. *See, e.g.*, *Technology Transitions Order* ¶ 11. Consistent with this approach, the Commission examined a variety of factors, including all of its transition rules as well as evidence about market demand. *Id.* ¶¶ 13-39. Given this overall market analysis, the simple

---

[14] INS Legal Analysis at 7, n.18, 16, 29, n.83 (citing *In re Tech. Transitions*, 31 FCC Rcd. 8283 (2016) ("*Technology Transitions Order*")).

[15] INS Legal Analysis at 6-7 & n.18 (citing *Technology Transitions Order* ¶ 19, n.43 ("non-dominant status does not extend to centralized equal access providers because such carriers do not provide service to end users.")).

reason that the Commission did not make a non-dominance finding as to INS and other CEA providers was that there was no record at all before the Commission as to CEA providers. Neither INS nor any other CEA providers participated in the proceeding. There was thus no basis to make the required findings that CEA providers lacked market power. As such, the single sentence in footnote 43 of the *Technology Transitions Order* is not, and could not be, a revision to the Commission's rate cap and rate parity rules to exclude CEA providers. Rather, it is simply a statement explaining the scope of the Commission's declaratory ruling.[16]

### B. INS Concedes It Is A LEC, And Thus It Is Subject To The Rate Cap And Rate Parity Rules As Either A Rate-of-Return Carrier Or A CLEC.

INS also argues that it is not subject to the rate cap and rate parity rules because it is neither a "rate-of-return local exchange carrier" subject to Section 51.909 nor a "Competitive Local Exchange Carrier" subject to Section 51.911. INS Legal Analysis at 25 (internal quotation marks omitted); *id.* at 10-15. INS's argument is foreclosed by its admissions, including its admission that it is a LEC. *See, e.g.*, INS Answer ¶¶ 92-94, 96-97; *cf*. Compl., § III; AT&T Legal Analysis at 30-33 (citing 47 U.S.C § 153(32); 47 C.F.R. § 51.5). As AT&T explained, INS could be a rate-of-return carrier subject to Section 51.909, but even if it is not, then INS, as a LEC, is unquestionably a "Competitive Local Exchange Carrier" subject to the Commission's rate cap and rate parity rules. AT&T Legal Analysis at 30-33.

[16] INS also argues that, in light of the reclassification of ILECs as non-dominant as to the provision of switched access services, there are no dominant carriers subject to Section 61.38 and that Section 61.38 would be a "nullity" if the rate caps applied to INS and other CEA providers. INS Legal Analysis at 10. This is not accurate. For any CEA providers electing not to engage in access stimulation, Section 61.38 applies to their rates.

Section 51.911 of the Commission's rules contains the rate cap and rate parity rules applicable to CLECs.[17] Section 51.903(a) defines a "Competitive Local Exchange Carrier" as "*any* local exchange carrier, as defined in § 51.5, that is not an incumbent local exchange carrier." 47 C.F.R. § 51.903(a) (emphasis added). Based on the plain definition in Section 51.903(a), "any" LEC that is not an ILEC is a CLEC. INS concedes that it is a LEC.[18] Thus, even if INS is not a rate-of-return carrier because INS is not an ILEC, then INS necessarily is a CLEC under Section 51.903(a) and subject to Section 51.911. AT&T Legal Analysis at 30-33. The express language in the Commission's regulations thus requires rejection of INS's argument that "the Commission has not classified all non-ILECs as CLECs." INS Legal Analysis at 12. In fact, that is precisely what the regulation in Subpart J of Part 51 states, for purposes of that subpart. 47 C.F.R. § 51.903(a) ("A [CLEC] is any [LEC], as defined in § 51.5, that is not an [ILEC].").[19]

INS argues that it is "commonly understood" that INS and other CEA providers are not CLECs and that, historically, CEA providers have set their rates pursuant to Section 61.38 rather than Section 61.26, which applies to CLECs. INS Legal Analysis at 11. That is simply irrelevant here, because the text of Sections 51.903 and 51.911 is unambiguous. In any event, even if INS

---

[17] 47 C.F.R. § 51.911. *See, e.g., id.* § 51.911(a)(1) ("In the case of Competitive LECs operating in an area served by a Price Cap Carrier, no such Competitive LEC may increase the rate for any originating or terminating intrastate switched access service above the rate for such service in effect on December 29, 2011.").

[18] INS Answer ¶¶ 92-94, 96-97. Specifically, INS concedes it has filed tariffs as a LEC. *Id.* ¶¶ 96-97. And it also admits that it provides exchange access service, *id.* ¶¶ 92-94, which is central to the definition of a LEC, both in the Act and Section 51.5 of the Commission's rules. 47 U.S.C. § 153(32) (a LEC is an entity engaged in the provision of exchange access); 47 C.F.R. § 51.5 (same).

[19] INS claims that only "those non-ILECs that are non-dominant" are classified as CLECs in Part 51. INS Legal Analysis at 12. But that is simply not what the regulation states, and INS's reliance on a 1997 court decision (*see id.*) that pre-dates the regulation cannot change the clear text of the rule.

and other CEA providers were not traditionally CLECs, for purposes of applying the rate cap and rate parity rules, those rules were intended to apply to "all" switched access services and to "any" LECs. *See Connect America Order* ¶¶ 798, 800-01; 47 C.F.R. § 51.903(a); *see* Compl. ¶¶ 90-91 (explaining broad scope of rules). That is the primary reason why the rules apply to INS, and, as AT&T noted and INS does not dispute, precisely what type LEC INS should be considered under Part 51 is not significant in determining that INS violated the rules. AT&T Legal Analysis at 32-33.[20]

### C. The Rate Cap And Rate Parity Rules Apply To INS Even Though It Does Not Directly Serve End Users.

INS argues that the rate cap and rate parity rules do not apply to INS because INS does not directly serve end users, and that, as a consequence, INS cannot directly offset any decrease in revenue from increased charges on end users. INS Legal Analysis at 11-12, 15-16.

The Commission has already rejected a similar argument made by another intermediate transport provider. *AT&T Servs. Inc. v. Great Lakes Comnet, Inc.*, 30 FCC Rcd. 2586, ¶ 22 (2015) ("*Great Lakes Comnet Order*"), *aff'd in relevant part*, *Great Lakes Comnet, Inc. v. FCC*, 823 F.3d 998, 1002-04 (D.C. Cir. 2016). There, the carrier argued that the CLEC access rules did not apply to it because it served no end users. In rejecting that argument, the Commission concluded that there is "no 'longstanding [Commission] policy of not imposing rate caps on carriers that do not

[20] INS does not respond to AT&T's point that it would be rational to consider INS to be a rate-of-return carrier under Part 51. *See* AT&T Legal Analysis at 31-32. Notably, INS relies heavily on how a rate-of-return ILEC is "specifically define[d]" in Part 51 to claim it is not an ILEC. *See* INS Legal Analysis at 14-15. However, INS claims that the definition of CLEC in Part 51 is only a "general definition" that cannot be read to apply to INS. *Id.* at 12. INS cannot have it both ways. INS concedes it is a LEC, and under Part 51, it is subject to the rate cap and rate parity rules, either as an ILEC or a CLEC.

serve end-users,'" and that the carrier "must comply with existing rules during the transition to 'bill and keep.'" *Id.* ¶ 22.

When the Commission adopted rate caps as an initial step of its ICC reform, it did so to "ensure[] that no rates increase during reform" and to "combat potential arbitrage and other efforts designed to increase or otherwise maximize sources of intercarrier revenues during the transition" *Connect America Fund* ¶ 798; *id.* ¶ 800, n.1494. As such, the purpose of the rate caps has nothing to do with whether the carrier directly serves end users. Rather, the purpose is to prevent exactly what INS has done with its rates—to ensure "that no rates increase during reform." *Id.* ¶ 798. Further, and in any event, the Commission rejected "the notion that ICC reform should be revenue neutral," and thus no carrier is assured that reductions in access charge revenue will automatically be offset by increases in charges to end users. *Id.* ¶ 38; *see id.* ¶ 924.

INS, as a LEC providing switched access services, is obligated to follow the rate cap and rate parity rules, even though it does not directly serve end users. How the Commission may decide to apply additional transition steps to INS (or other entities that do not directly serve end users) in the future has no relevance to INS's current duty to comply with existing law. *See Great Lakes Comnet Order* ¶ 22 (how the transition will occur in the future when a tandem owner does not own the end office has "no bearing" on how the Commission's rules "presently appl[y]").

### D. The Rate Caps And Rate Parity Rules Apply Broadly To All Switched Access Service Providers and All LECs, And Thus To INS, Even Though The Rules Do Not Explicitly Refer To CEA Service.

INS's final argument is that the Commission could not have intended the rate cap and rate parity rules to apply to INS because "[t]here is not a single reference to 'centralized equal access provider' in the *USF/ICC Transformation Order* or the Part 51 rules adopted by that decision." INS Legal Analysis at 18. However, there was no need for the Commission expressly to identify CEA providers as subject to the rules. The rate cap and rate parity rules apply to all switched access service providers and any LECs. INS concedes, as it must, that it is a LEC and that it provides switched access services. Because the rules apply broadly to LECs and switched access services, they necessarily apply to INS and other CEA providers.[21]

## III. INS'S ANSWER CONFIRMS THAT IT IS ENGAGED IN ACCESS STIMULATION AND NEEDED TO FILE REVISED TARIFFS.

In its Complaint and Legal Analysis, AT&T demonstrated that INS was engaged in "access stimulation" within the meaning of the Commission's rules (47 C.F.R. § 61.3(bbb)); INS consistently exceeded, by a wide margin, a 3-to-1 ratio of terminating to originating traffic, thereby establishing a rebuttable presumption that "revenue sharing is occurring and [INS] has violated the Commission's rules." *Connect America Order* ¶ 699; Compl. § IV; AT&T Legal Analysis, Part III. Based on the discovery exchanged to date, AT&T further explained that INS has revenue sharing agreements, in this case with CLECs engaged in access stimulation. AT&T Legal Analysis at 39-43. Because INS is and has been engaged in access stimulation, INS was required to file revised tariffs, but INS did not do so. AT&T Complaint § IV.C; AT&T Legal Analysis at 43-45. In response, INS makes three arguments to overcome the presumption of revenue sharing. All of INS's arguments should be rejected.

[21] As AT&T anticipated, INS raises a claim that its CEA tariff is "deemed lawful," and that the Commission "cannot entertain" AT&T's arguments for "retroactive refund" or "treating the filed tariff as void *ab initio*." INS Legal Analysis at 33-34. AT&T's initial Legal Analysis responded in detail to these arguments, AT&T Legal Analysis, Part II.B., and INS failed to respond to AT&T's explanation of why the "deemed lawful" doctrine has no application to AT&T's claims that INS's CEA tariff does not include access stimulation traffic, that INS violated the rate cap and rate parity rules, and that INS violated the access stimulation rules. *Id.*; Compl. §§ II-IV. Further, to the extent INS engaged in furtive concealment, the deemed lawful doctrine would not apply to INS's manipulations of its rates. Compl. ¶ 16.

### A. INS Is Subject To The Access Stimulation Rules.

INS's first argument is frivolous. It asserts that the access stimulation rules "only apply to LECs that provide service to end users." INS Legal Analysis at 25. However, INS offers no support for that assertion, which contains no legal citation, *see* 47 C.F.R. § 1.720(d). Further, as noted by AT&T and unrebutted by INS, when the Commission issued the access stimulation rules, it rejected the claim that its rules should not apply to wholesale services provided by intermediate transport providers. *See Connect America Order* ¶ 671.

Switching tactics, INS concedes that the rules plainly apply to any "rate-of-return local exchange carrier" and any "Competitive Local Exchange Carrier," *see* 47 C.F.R. § 61.3(bbb), but INS claims that it is neither of these entities. *Id.* INS is wrong. AT&T explained that, for purposes of the access stimulation rules, it was appropriate to treat INS as a "Competitive Local Exchange Carrier." AT&T Legal Analysis at 44-45. This is because INS fits squarely within the definition of a "CLEC" in Section 61.26(a)(1) and because, for the transport service on the access stimulation traffic to CLECs, INS is in effect acting as a surrogate for the services the CLEC could be providing. *Id.*[22] AT&T also explained that the Commission has previously determined, and the court of appeals has affirmed, that an intermediate transport provider (which was not an ILEC) falls within the definition of CLEC in Section 61.26(a)(1). *Great Lakes Comnet Order* ¶ 20; *Great Lakes Comnet*, 823 F.3d at 1002-03. INS has no response to AT&T, and under these rules and

[22] There is no definition of "Competitive Local Exchange Carrier" in Section 61.3 (which contains the definitions applicable generally to Part 61), and it is thus reasonable in defining that term to look to the definition of "CLEC" in Section 61.26(a), because that section contains the access stimulation rules applicable to CLECs.

precedents, INS can reasonably be considered to be a CLEC for purposes of the access stimulation rules.[23]

### B. INS Has Not Rebutted The Presumption That It Is Engaged In Access Stimulation.

INS concedes that it exceeds the 3-to-1 trigger to establish the presumption that it is engaged in access stimulation, Answer ¶ 107, but it claims that it has rebutted the presumption, relying primarily on a declaration it submitted in the district court case. INS Legal Analysis at 26 & n.74. INS's claims lack merit and should be denied.

On this issue, INS has the burden of proof. *Connect America Order* ¶ 699. To rebut the presumption, the Commission declined "to require a particular showing, but, *at a minimum*," the LEC should provide an officer's certification that it is not engaged in revenue sharing, "*and* the LEC must also provide a certification from an officer of the company with whom the LEC is alleged to have a revenue sharing agreement(s) associated with access stimulation that that entity has not, or is not currently, engaged in access stimulation and related revenue sharing with the LEC." *Id.* (emphases added). INS has not made even this minimum showing. It has not provided certifications from the officers of the CLECs with which AT&T has alleged INS has revenue sharing agreements. *See* Compl. § IV.B; AT&T Legal Analysis, Part III.A; Habiak Decl. ¶¶ 15-16; AT&T Exs. 31-37, 65 (alleging agreements with specific named CLECs).

---

[23] Even if that were not the case, then INS would be subject to the access stimulation rules as a "rate-of-return local exchange carrier." 47 C.F.R. § 61.3(bbb). That term is not defined for purposes of Parts 61 or 69, but INS has conceded that it is a LEC, INS Answer ¶ 92, and a central part of its defense is that it is regulated on a rate-of-return basis. *See also* AT&T Ex. 84, AT&T Opp'n to INS Mot. for Summ. J., *Iowa Network Servs., Inc. v. AT&T Corp.*, No.14-3439, at 11–14 (D.N.J. June 1, 2015) (citing to material where INS concedes it is regulated on a rate-of-return basis).

Even if INS had made the minimum showing on the burden of production, INS has failed to meet its ultimate burden of proof to show that its agreements with the CLECs are not revenue sharing agreements under the Commission's rules and precedents. INS claims that AT&T "ignores" this issue, INS Legal Analysis at 26, but in fact AT&T provided an extensive discussion of the definition of "access revenue sharing agreement" in Section 61.3(bbb) and the Commission's orders on this issue, demonstrating that INS's agreements with access stimulation CLECs such as Great Lakes fit within the definition of revenue sharing agreement. Compl. § IV.B; AT&T Legal Analysis at 39-43.

Because of the presumption, INS's agreements fall within the definition of a revenue sharing agreement unless INS can prove that INS does not make a net payment to the CLECs in which the payment is based on the billing or collection of access charges. When determining whether a "net payment" has occurred, the items that "*shall* be taken into account" include not only "all" payments, discounts, credits, or "services," but also all "features, functions, and other items of value, *regardless of form*." 47 C.F.R. § 61.3(bbb)(1)(i) (emphases added). Further, as the Commission has clarified, a net payment is "based upon the billing or collection of access charges" unless INS proves that its CLEC agreements do not "result[] in the generation of switched access traffic to the LEC" and do not "provide[] for the net payment of consideration of any kind."[24]

[24] *In re Connect America Fund*, 27 FCC Rcd. 605, ¶ 27 (W.C.B. 2012) ("*CAF Clarification Order*") (internal quotation marks omitted).

INS's Legal Analysis does not address this issue at all, other than to assert, without factual support, that INS has no revenue sharing agreements. INS Legal Analysis at 26-27.[25] In its Answer, INS claims that its CLEC agreements are not revenue sharing agreements because the CLEC "traffic agreements do not involve any service provided to LECs." Answer ¶ 110. As the text of the rule provides, that is not the relevant test. In determining whether a net payment is made, the Commission considers "services," but also "shall" consider "features, functions, and other items of value, regardless of form." 47 C.F.R. § 61.3(bbb)(1)(i). As AT&T explained, and INS does not refute, INS's agreements with the CLECs allow the CLECs' access stimulation traffic to be routed over INS's network without any charge to the CLEC. AT&T Legal Analysis at 40-41; AT&T Exs. 31-37, 65. That routing is an "item[] of value" to the CLEC, and because INS receives nothing in return for this item of value, INS has made a "net payment" under the rule. *See* AT&T Legal Analysis at 40-41.[26] In fact, the routing provided by INS is (or was) of such substantial value to the CLECs (in that it enabled them to bill or collect huge end office access revenues from IXCs) that they were apparently willing to agree to route their traffic over INS's

[25] INS also offers a declaration of its Vice President of Business Consulting, Frank Hilton, who states that he has "forty years" of experience in IT and telecommunications, that he "ha[s] become generally familiar with the contracts" between INS and other entities, and that he has reviewed INS's agreement with Great Lakes (but apparently not the other CLECs). Iowa Network Services, Inc. d/b/a Aureon Network Services Answer to the Formal Complaint, Exhibit, Declaration of Frank Hilton ¶ 1, 15 (filed June 28, 2017) (" Hilton Decl."). Despite his experience and alleged familiarity with the agreements, Mr. Hilton provides virtually no facts about how the CLEC agreements operate in practice. *See id.* ¶ 15*; see also id.* ¶ 20 (making a vague allegation about the "purpose" of the agreements). Rather, on this issue, Mr. Hilton's declaration merely contains a few sentences that are nothing more than *ipse dixit* legal conclusions. *Id.* ¶ 15. Mr. Hilton's testimony should be disregarded.

[26] Further, the net payment under the CLEC traffic agreements is based on INS's billing or collection of access charges—indeed, as discussed below, INS's view is that the sole purpose of the agreement is to enable it to bill IXCs for access service. While that is not, in fact, the sole purpose, it is an intended effect of the traffic agreement, and thus the net payment is based on INS's billing or collection of access charges.

network without INS agreeing to share with them (or the conference/chat companies) the transport access revenue INS billed or collected. Thus, INS's contention that its CLEC traffic agreements do not call for INS directly to "share Aureon's access revenue with LECs" (INS Answer ¶ 110) only reinforces the value of INS's network routing to the CLECs.

In any event, even if the relevant test of a net payment were limited to "services," INS's argument that it provides no service to the CLECs pursuant to the traffic agreements defies credibility and logic. INS's position is that the CLEC traffic agreements pertain solely to CEA service, and that CEA service is provided to IXCs, not to the CLECs. INS Answer ¶ 110; Hilton Decl. ¶ 20. That makes no sense. INS provides services to IXCs via tariffs (or contracts) *with the IXCs*, and it is not necessary for INS to enter into a separate "traffic agreement" with a CLEC in order for INS to provide service to IXCs.[27] Rather, under INS's traffic agreements with CLECs, INS is agreeing to provide routing and related services to the CLECs, so that the CLECs' access stimulation traffic from the IXCs reaches the CLECs. **[[BEGIN CONFIDENTIAL]]** [redacted]

[27] INS also asserts that it is significant that its CLEC traffic agreements have the same terms as its traffic agreements with other ILECs. INS Answer ¶ 109. INS has not provided all those agreements to verify this claim, but even if it were true, it does not mean the CLEC traffic agreements are not revenue sharing agreements. To the contrary, if other LECs with the purportedly same traffic agreements began terminating access stimulation traffic over INS's network, then those agreements would also be revenue sharing agreements.

[redacted] **[[END CONFIDENTIAL]]** That is a "service" within the meaning of the rule (particularly one that applies "regardless of form").[29]

In short, INS entered into traffic agreements with CLECs engaged in terminating large volumes of access stimulation traffic, and INS agreed to provide the CLECs with transmission capacity and route the CLECs' traffic to the CLECs for no charge, in turn enabling INS to bill millions of dollars of access revenue. Those agreements fit within the definition of an access revenue sharing agreement. 47 C.F.R. § 61.3(bbb). Under the agreements, INS is providing an item of value to the CLECs (network routing) and receiving no payment for that item from the CLECs, and, as a result, INS is able to bill larger volumes of access services because of that agreement.

### C. INS Had To File Revised Tariffs Because It Is Engaged In Access Stimulation.

INS's third argument is that, even if it engaged in access stimulation, it did not need to file revised tariffs because it is subject to Section 61.38 of the Commission's rules, and the rules provide that such carriers do not need to file revised tariffs if the "costs and demand" arising from the new access revenue sharing agreement "were reflected in its most recent tariff filing." INS Legal Analysis at 27 (internal quotation marks omitted) (quoting *Connect America Order* ¶ 685). INS's claims are wrong.

---

[28] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[29] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

As explained above and in AT&T's Complaint and Legal Analysis, INS can be considered a CLEC. Assuming INS is not an incumbent LEC, then INS fits within the Commission's definition of "CLEC" applicable to its CLEC access stimulation rules. 47 C.F.R. § 61.26(a)(1) (a "CLEC" is "a local exchange carrier" that is not an ILEC under 47 U.S.C. 251(h) and "provides some or all of the interstate exchange access services used to send traffic to or from an end user"). INS provides tandem switching and transport on calls, which is "some" of the access services used to complete calls.[30] Further, the Commission has held that an intermediate transport provider was a CLEC for purposes of Section 61.26(a)(1). *See Great Lakes Comnet Order*.

In any event, INS has not properly reflected its costs and demands in its tariff filings. *See* Compl. § V; AT&T Legal Analysis Parts III.B, IV; *infra* Part IV; Rhinehart Decl. and Rhinehart Reply Decl. Indeed, it has engaged in furtive concealment. *See* Compl. § V; AT&T Legal Analysis at 4 and Parts III.B, IV; *infra* Part IV; Rhinehart Decl. and Rhinehart Reply Decl. Because INS has never appropriately made a rate filing under Section 61.38 that reflects the proper "costs and demand" associated with its access stimulation activity, INS was required to refile its rates.

## IV. INS HAS IMPROPERLY MANIPULATED ITS CEA RATES IN VIOLATION OF SECTION 201(B), AND INS'S RESPONSE FAILS TO ADDRESS THIS CONCERN.

As explained in the Complaint and AT&T's Legal Analysis, INS has improperly manipulated its rates in violation of Section 201(b). Despite the fact that switched access charges have declined nearly 80% over the past few decades, INS has maintained consistently high CEA rates and a number of concerns (including INS's lease cost calculations, rate allocations, and its

[30] In this case, AT&T assumes, *arguendo*, that all traffic was completed to end users. In its case against Great Lakes, AT&T has asserted that certain calls were not completed to "end users" under the Commission's rules and GLCC's tariff.

inclusion of improperly billed charges in its revenue requirement as "Uncollectible Revenues,") calls into question the reasonableness of INS's CEA rates. *See* Compl. § V; AT&T Legal Analysis, Part IV. Further, INS has engaged in furtive concealment, evidenced by the fact that key information has not been made available.

In its Answer and Reply, INS sidesteps nearly every one of these issues and, where assertions or explanations are provided, they are not substantiated with any kind of cost support or other data. Indeed, a number of INS's assertions have the effect of actually raising additional concerns. Further, as Mr. Rhinehart explains in his Reply Declaration, some of INS's views with respect to the Commission's rate regulation regime are highly suspect. *See* Rhinehart Reply Decl. ¶¶ 6–13 (general observations). As demonstrated below, all the accounting and rate manipulation concerns identified in AT&T's Complaint and Legal Analysis persist.

### A. The High Level of INS's CEA Rates.

As shown in AT&T's Legal Analysis and in the Declaration of Daniel P. Rhinehart ("Rhinehart Decl."), INS's current interstate CEA rate ($0.00896 per minute) has only declined by about three tenths of a cent over the past three decades, and since 2013 has actually increased by about 44 percent (from $0.00623 per minute to its current level). *See* AT&T Legal Analysis at 49–50; Rhinehart Decl. ¶¶ 6–8. By contrast, during these same time periods, there has been a precipitous decline in switched access rates across the industry, a tripling of the volume of the switched access traffic transported on INS's network, the substantial depreciation of INS's switching plant, cost efficiency gains from advances in transmission technology, and other factors. *See* AT&T Legal Analysis at 49–51; Rhinehart Decl. ¶¶ 8–10. Further, **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** *See* AT&T Legal Analysis at 52–53; Rhinehart Decl. ¶ 13. That conclusion also draws support from the cost support attached to INS's recent tariff filings. Indeed, those filings demonstrate that the actual cost of transporting traffic on INS's network is well below INS's current CEA rate. If, for example, the "Uncollectible Revenues" that INS has unlawfully included in its revenue requirement are removed, the resulting rate would be almost three tenths of a cent lower than INS's current CEA rate. *See* AT&T Legal Analysis at 52–53; Rhinehart Decl. ¶¶ 11–12.

In its response, INS does not dispute that INS's CEA rates have remained relatively flat over the past 30 years (a decrease of 23.4 percent versus an industry decline of almost 80%). *See* Schill Decl. ¶ 7; INS Legal Analysis at 43–44; INS Answer ¶¶ 118–23. Nor does INS dispute that switched access rates generally, and the rates INS charges for certain non-CEA services, have decreased more dramatically. *See id*. Moreover, INS does not dispute that **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** Division for use of network capacity, or that the removal of "Uncollectible Revenues" from its revenue requirement would decrease its CEA rate by more than two tenths of a cent.[31] Instead, INS dismisses AT&T's discussion of industry rate trends, arguing that CEA service is unique and that data regarding non-CEA rates is irrelevant. *See* Schill Decl. ¶¶ 5, 7–13; INS Legal Analysis at 43–47. This false contrast is but one of several detractions from the central concern, which is that INS's rates are unreasonably high.

---

[31] In fact, INS effectively concedes that its CEA rates are excessive in discussing the rate impact of its inclusion of "Uncollectible Revenues" in the Access Division's revenue requirement. *See* Schill Decl. ¶ 12; INS Legal Analysis at 45–46. In that connection, INS admits that the rate "would be $0.00673 – a full half cent less than in 1989," *see id.*, and more than two tenths of a cent less than the current rate.

To begin, INS's false contrast between CEA service and other access service is difficult to reconcile with its claim that CEA service is just another form of switched access service. *See* INS Legal Analysis at 22. Further, it is exaggerated. *See* Schill Decl. ¶ 5. The fact that CEA service is provided in rural areas may account for some of the differences in historic pricing trends, but it does not explain the huge differential between the trend line for INS's CEA service (a decline of about 23% in the period 1988 to 2010) and the trend line for switched access rates generally (a decline of about 80% over the same period). *See* AT&T Legal Analysis at 49–50; Rhinehart Reply Decl. ¶ 16. And INS offers no explanation as to why the structure of its CEA rate or the size of its fiber network would justify such a big differential.

Second, INS's discussion of depreciation and increased call volumes works *against* INS—not in its favor. The fact that depreciation expense is no longer a significant rate driver, and the tremendous growth in call volumes that INS has experienced (particularly during the period 2004 to 2011), should both have contributed to a significant decline in INS's CEA rates. *See* Rhinehart Reply Decl. ¶ 17. But INS's rates have not adjusted accordingly.[32]

Third, INS's discussion of purported cost efficiency gains is a *non-sequitur*. INS offers no evidence that such gains were actually realized and reflected in its CEA rate, claiming instead that such gains "have been offset by increases in access stimulation traffic volumes, and the need to augment facilities in order to handle that traffic." Schill Decl. ¶ 10; INS Legal Analysis at 45. This claim is unsupported and makes no economic sense. Efficiency gains are generally not lost with the addition of capacity, especially when that capacity is being added to handle large volumes of traffic directed to a single location (or a handful of locations), which is generally the case with

[32] The fact that INS's call volumes have declined somewhat since 2011 also does not explain why during the period 1998 to 2010 switched access rates declined by almost 80 percent but INS's rates only declined by 23 percent. *See* Rhinehart Reply Decl. ¶ 17.

access stimulation traffic. *See* Rhinehart Reply Decl. ¶ 18. In fact, in such circumstances, one would expect that the increased volumes would result in the realization of economies of scale. *See id*.

Fourth, INS's assertion that "the reductions in the **[[BEGIN 3RD PARTY HIGHLY CONFIDENTIAL]]** [redacted] **[[END 3RD PARTY HIGHLY CONFIDENTIAL]]** and the **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** do not have any bearing on whether [INS's] CEA service rates must be reduced," Schill Decl. ¶ 12; INS Legal Analysis at 46, is wholly unconvincing. INS does not dispute that such rate reductions occurred with respect to those services and that they were large. Further, it defies logic to contend that providing CEA service is **more costly** than providing small increments of capacity that are tailored to specific customer needs. Indeed, that cost proposition is completely at odds with the economic rationale relied on by the Commission in initially approving CEA service in 1988. *See Alpine* ¶ 29 (CEA service was intended "to lower the cost of transporting traffic from [INS's tandem] to the various remote rural exchanges"). Additionally, the claim that the Commission's *Alpine* decision dramatically changed the transport costs incurred by the Access Division is not only unsupported, it was disregarded by the Commission in *Alpine* because it could not be substantiated. *See id.* ¶ 48 ("The parties stipulated, however, that INS has not quantified any resulting actual reduction in the rates paid by IXCs.").

In sum, despite AT&T's call for INS to justify its rates, INS has failed to provide any evidence or a substantiated explanation for its high CEA rates—which, despite massive volume increases, cost efficiency gains, and other factors, remain consistently high. Accordingly, the Commission should find that INS's CEA rates are unreasonable.

### B. INS's Handling of Network Investment Costs.

As explained in AT&T's Legal Analysis, network costs constitute a significant percentage of the Access Division's overall revenue requirement, and that percentage has been increasing in recent years even though the Access Division's traffic of late has been declining. *See* AT&T Legal Analysis at 54; Rhinehart Decl. ¶¶ 13–15. Notwithstanding the importance of this cost component to the derivation of INS's rates, nowhere in its tariff filings or in the informal discovery that preceded AT&T's Complaint has INS explained or documented the method used in calculating the network lease costs that are computed and then allocated to INS's Access Division. It is a proverbial "black box." *Id.* Likewise, no explanation is provided as to why this component of INS's costs—and only this cost component—is handled in this manner. *Id.* Finally, the evidence regarding INS's network costs that does exists shows that **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** *See* AT&T Legal Analysis at 54; Rhinehart Decl. ¶¶ 16–17.

In its response, INS does not dispute that network costs constitute a significant percentage of the Access Division's overall revenue requirement, or that the percentage continues to increase. INS also confirms that the Access Division leases its network facilities from another INS Division, *i.e.*, the IXC Division. *See* Schill Decl. ¶ 14. But despite these acknowledgements, INS fails to provide any detail or backup data to justify its lease costs. Instead, INS detracts from its problematic handling of network investment costs by wrongly asserting that it its leasing arrangement is *required* by law, and by shifting focus to what it *did* report, rather than what it has *failed* to disclose.[33] Each of these concerns is addressed below.

To begin, INS incorrectly asserts that the Access Division is *required* to lease its transmission facilities and equipment from the IXC Division. Schill Decl. ¶ 14. While the Commission rules required the Access Division to "have separate books of account" and prohibited joint ownership of "transmission or switching equipment," *see In re Policy & Rules Concerning Rates for Competitive Common Carrier Servs. & Facilities Authorizations Therefor*, 98 F.C.C.2d 1191, ¶ 9 (1984) ("*Fifth Report and Order*"), they did not "require" the Access Division to lease such facilities from the IXC Division, and the Access Division does not, in fact, lease its switching equipment from the IXC Division. Moreover, the *INS Order* also contains no such "requirement." *See* Rhinehart Reply Decl. ¶ 23.

Next, INS makes the assertion that its lease cost calculations are reasonable and accurate, but that assertion is unsupported by any documentation or test results. Contrary to INS's claims, its tariff filings do not break out on a separate basis the lease costs that the Access Division pays to the IXC Division, nor do they report that the amounts in the Cable & Wire Facilities account are equal to the lease payments made by the Access Division to the IXC Division. *See* Rhinehart Reply Decl. ¶ 24. Those lease costs may indeed be included in the Access Division's revenue requirement, but its tariff filings do not report this information, nor has INS made available in its Tariff filings or the pre-Complaint informal discovery the results of INS's purported test of its

[33] INS also wrongly contends that AT&T had alleged "INS's investments in its fiber network have not been accurately recorded on INS's books." *See* Schill Decl. ¶ 14 (citing Rhinehart Decl. ¶ 14). Mr. Rhinehart's initial declaration accurately reported INS's network investment costs and noted that none of that investment has been assigned to the Access Division. *See* Rhinehart Reply Decl. ¶ 22.

lease costs for reasonableness.[34] The methodology or results of such tests would be highly relevant but INS has not made them available to review in this proceeding. *See id.* ¶ 25.

INS justifies its non-disclosure of the above information on the basis that its tariff filings "disclose all the information necessary to calculate the lease rate paid to the IXC Division for fiber." *See* Schill Decl. ¶ 16; INS Legal Analysis at 48. And it then attacks AT&T's transport cost calculations—again, without providing supporting cost data to demonstrate that AT&T's calculations are incorrect. First, the metric by which INS claims the lease costs can be derived—"dividing the transport costs by the reported minutes of use"—is not the metric used by INS in preparing its own summary table (Table 1). And INS's criticism of the metrics used by AT&T are unfounded, as INS uses a highly similar metric in its own response. *See* Rhinehart Reply Decl. ¶ 26. Second, INS's criticism of one critical comparative metric—Mr. Rhinehart's calculation of the DS-3 route mile rate paid by the Access Division—is baseless. Mr. Rhinehart based his calculation on a simple approach for situations where, as here, more detailed information has not been made available. *See id.* ¶ 27.[35] Third, INS's criticism of Mr. Rhinehart's rule of thumb does not change AT&T's core argument, which is that the lease rates charged to the Access Division

---

[34] Further, INS's assertion that the Commission's accounting rules do not require tariff cost support to include lease rates, *see* Schill Decl. ¶ 16, is a bit disingenuous given (i) that those rules were developed based on the assumption that the regulated carrier would own its own transmission facilities, (ii) in this proceeding, the reasonableness of those lease costs has now been challenged, and (iii) the costs are a large component of the revenue requirement.

[35] In fact, even with access to the data included on Table 1, Mr. Schill still used a rule of thumb **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** And that rule of thumb is very similar to the rule of thumb that Mr. Rhinehart used to covert the DS0 rate that had been provided to a DS-1 value. Instead of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** Mr. Rhinehart used 24, which as discussed below produces a lower DS-3 route mile rate for the Access Division, **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

are excessive. *See id*. ¶ 28. Indeed, the DS-3 route mile rate calculated by Mr. Schill **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** actually suggests that the gap between the rates charged to the Access division and the rates paid by **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** is even greater. And the amount INS suggests it costs to provision a DS-3 circuit—**[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**—is irreconcilable with the fact that INS has provided DS-3 circuits **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** *See* Schill Decl. ¶ 23. Either Mr. Schill's calculations are wrong, or INS has sold circuits at a significant loss. In either event, INS effectively concedes that the Access Division pays significantly above market rates, and thereby subsidizes INS's other transport services. *See* Rhinehart Reply Decl. ¶ 28. And finally, given the significant economies of scale that exist with respect to INS's access stimulation traffic (which is currently more than **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** of the Access Division's total traffic),[36] INS's claim that it is unreasonable to directly compare the transport rate paid by GLCC with the lease costs charged to the Access Division is invalid. This is particularly so given that INS's own "volume discount" rate does not reflect any anticipated cost savings, as that lower rate results exclusively from the exclusion of "Uncollectible Revenues" from the applicable revenue requirement. *See* Rhinehart Reply Decl. ¶ 29.

In sum, INS's lease cost assertions, as well as its critiques of Mr. Rhinehart's calculations, are of little significance given that INS has failed to provide sufficient supporting data. Given

[36] *See* Ex. 2, INS Worksheet (Aureon_02696-02708, at Aureon_02697–98).

INS's failure to justify its problematic lease cost calculations, the Commission should find that INS's rates are unreasonable and that INS has engaged in "furtive concealment." *See ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 413 (D.C. Cir. 2002).

### C. INS's Allocation of Costs for Network Facilities.

INS's allocation of its network facilities costs is also a source of concern. *See* AT&T Legal Analysis at 55–56. As Mr. Rhinehart documents in his declaration, the Access Division's share of such costs has increased from roughly 45% during 2004-2008 to over 70% in 2013-2017. *See* Rhinehart Decl. ¶¶ 18–19. Further, while the amount of such costs allocated to the Access Division remained fairly constant, the amount of such costs assigned to INS's other division has shrunk, declining from about $14 million in 2014 to about $5 million in 2017. *See id*. ¶ 19. As Mr. Rhinehart explains, any over-allocation of those costs necessarily leads to an overstatement of CEA rates. *See id*.

In its response, INS does not dispute the increase in the Access Division's share of the network facilities costs, nor does it deny that the amount of such costs assigned to its other divisions has declined. Indeed, INS's response lacks any evidence or explanation for why Cable & Wire Facilities costs have increasingly been allocated to the Access Divisions. *See* Rhinehart Reply Decl. ¶¶ 31–32. What INS's response does include is a significant amount of misdirection.

To begin, INS claims that any cost allocation comparisons are meaningless because its allocations are "compliant with the Commission's accounting rules," and because "the facilities being leased to the Access Division remain fairly constant from year to year." *See* Schill Decl. ¶¶ 20, 26, Table 1. However, its compliance with the accounting rules is inapposite here, and although its assertion of flat facilities costs may be true, INS fails to provide supporting cost material, or explain why the year to year number of facilities being leased is relevant to the question of whether the facilities are over-priced. *See* Rhinehart Decl. ¶ 32.

To be sure, Table 1 provided by Mr. Schill does not put to rest the over-allocation concern, as the data set from which the table was drawn is not provided or cited, and there is no explanation for how the data in each column was derived. *See id.* ¶ 33.[37] In addition, INS fails to explain why the amounts set forth in the column titled "Equivalent Cost Per DS-0 Mile" seem to be at odds with the estimate of that rate **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** that Mr. Creveling provided in his deposition in the Alpine case. *See id.* ¶ 34. Moreover, INS's assertion that the facilities costs have remained fairly constant seems to be at odds with the levels of the Equivalent Cost Per DS-0 Mile rate provided in Table 1, which shows a decline in that rate during a period in which INS reported an increase in projected network costs. *See id*.

In short, due in large part to its failure to provide sufficient cost support data, INS has not demonstrated the reasonableness of the network cost allocations that underlie its tariffed CEA rates.

**D. INS's Manipulation of its Lease Cost Calculations.**

An analysis of INS's lease cost calculations also raises concerns of improper cross-subsidization. *See* AT&T Legal Analysis at 56–57. As explained in Mr. Rhinehart's Declaration, **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** Rhinehart Decl. ¶¶

[37] Similarly, although Mr. Schill criticizes Mr. Rhinehart for failing to perform "an analysis of the costs and use of the facilities being provided," *see* Schill Decl. ¶ 20, he fails to note that such analysis cannot be completed at this juncture because INS has failed to provide detailed information regarding the computation and reasonableness of the leases costs that are charged to the Access Division and how those lease costs compare to the rates that INS charges to its other customers, appropriately adjusted. *See* Rhinehart Reply Decl. ¶ 35.

22–23. Further, the attendant changes in INS's CEA rates during this same time period is consistent with and suggests the occurrence of cross-subsidization, as does the fact that INS continued to invest heavily in its fiber network during this period, despite significant declines in throughput. *See id*. ¶¶ 23–27. Additionally, INS's own supporting data—including the Access Division's share of network costs—also suggests that the Access Division has been cross-subsidizing INS's other services. *See id*.

In its response, INS states that the data tables presented by Mr. Rhinehart addressing INS's problematic lease cost forecasting are simply "not relevant." *See* INS Legal Analysis at 54–55. But, once again, INS has failed to address the issue presented in AT&T's Complaint—that is, whether INS's allocation of network costs to the Access Division is reasonable. *See* Rhinehart Reply Decl. ¶ 36. And Mr. Schill's argument that Tables D, E and F to Mr. Rhinehart's initial declaration are not relevant is unsound.

First, Table D **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** *See id*. ¶ 37. Instead of addressing this concern, INS claims that Table D is irrelevant because it addresses the lease cost forecasts for all of INS's divisions, rather than just the Access Division. *See* Schill Decl. ¶ 27. Putting aside that the forecasts relied on by AT&T were the very ones produced by INS in informal discovery, INS ignores that note 32 in Mr. Rhinehart's declaration addresses that concern and points out that the same trends reflected in Table D can also be seen in other data regarding the Access Division's lease costs. *See* Rhinehart Decl. ¶ 23, note 32. So INS's excuse for not addressing the reasons for the changes in the forecasts and their relationship to the changes in INS's CEA rates is no excuse at all. *See* Rhinehart Reply Decl. ¶ 37.

Second, Table E shows that INS nearly tripled its investment in Cable & Wire Facilities between 2010 and 2016, and this data raises the concern as to whether the Access Division is being required to fund this investment notwithstanding a decline in throughput, a decline in demand for legitimate CEA service, and the FCC's finding that access stimulation is a "wasteful" arbitrage practice that should be "curtailed." *See* Rhinehart Decl. ¶¶ 24–25, Table E. And Table F presents a "lease cost/mou" metric to roughly measure the efficiency of the Access Division's CEA service. *See id*. ¶¶ 26–27, Table F. The skyrocketing "lease cost/mou" figures since 2013 demonstrate either declining demand, over-allocated network costs, or both. *See* Rhinehart Reply Decl. ¶ 38. But again, INS does not resolve this issue; it simply dismisses all of these concerns without ever seriously addressing them.

In sum, the data presented by AT&T in this section goes to the very heart of the issue of the reasonableness of INS's CEA rates, and it presents serious questions that INS fails to address.

### E. INS's Allocation of Costs Between Interstate and Intrastate Traffic.

As explained in the Legal Analysis, INS now recovers the vast majority of its costs from interstate CEA traffic, rather than intrastate traffic, and thus a key assumption underlying the Commission's order allowing INS to provision CEA service no longer holds true. *See* AT&T Legal Analysis at 57–58. Notwithstanding, INS did not inform the Commission of this shift, and INS has also failed to explain the apparent discrepancy between its PIU factor (78 percent) and the percentage of costs assigned to the interstate jurisdiction (93.9 percent in 2016). *See id*. at 58–59. INS also appears to have understated the interstate PIU factor for access stimulation traffic, which, if true, raises the possibility that its CEA rates are overstated. *See id.* at 59; *see also* Rhinehart Decl. ¶¶ 28-33.

In its response, INS does not dispute that the vast majority of its costs are recovered from interstate CEA traffic, rather than intrastate traffic. *See* Schill Decl. ¶¶ 32–36; INS Legal Analysis at 57–59; INS Answer ¶¶ 128–30. Nor does INS dispute that the interstate character of this traffic has changed dramatically since 1988. *See id*. And, even more significantly, INS fails to address the apparent discrepancy between its 78-percent PIU factor and its cost allocations; in fact, neither Mr. Schill not INS respond to this issue at all.[38] *See id*. Instead, INS argues that it was under no obligation to inform the Commission of the dramatic shift in the mix of its traffic, that the change in the jurisdictional mix was due entirely to billing system modifications, and that INS "does not have any control over the jurisdiction of the traffic that is sent by IXCs to the CEA network." *See* Schill Decl. ¶¶ 33–34; *see also id*. ¶ 5; INS Legal Analysis at 58–59. There are serious flaws in each of these arguments.

First, in arguing that it was under no obligation to inform the Commission of the significant shift in its traffic mix, INS mis-portrays the *INS Order* (which it refers to as the "FCC 214 Order"), and it presupposes that the Commission would revisit its conditional approval of CEA service in Iowa only if the IUB did not require NWB to use INS's CEA system for interstate traffic. To be sure, that condition was imposed. However, that does not mean that the Commission's concern that the "costs assessed on interstate calls could increase substantially" was limited to that issue, or that the Commission did not want to be informed of different developments that might result in a substantial increase in the costs to be assessed to on interstate services. Yet, that is how INS has apparently interpreted the Commission's Order. That view is myopic. AT&T has now made

[38] In its response to AT&T's discovery requests, INS notes that the reference to 78% as it related to access stimulation traffic was a typo – the 78% factor was the factor applicable to all traffic. *See* INS Objections and Responses to Complainant's First Set of Interrogatories, at 12. INS does not, however, indicate what the percentage applicable to the access stimulation traffic was, or otherwise address the specific concerns addressed in Mr. Rhinehart's initial declaration.

eminently clear that the major assumption underlying the Commission's approval has long-since eroded—that is, INS now recovers a vast majority of its costs from interstate traffic—and for this reason there is a serious "need to review [INS]'s proposal." *INS Order* ¶ 32.

Second, INS's justifications for the shift in traffic fare no better. To begin, INS's argument that upgrades to its billing system caused the dramatic shift in the jurisdictional mix of CEA traffic is inconsistent with the explanation provided in its 2008 Tariff Filing, in which INS attributed the change in its PIU factor to two factors: changes in its ability to monitor traffic and the huge influx in access stimulation traffic, which was predominately interstate in nature. *See* Rhinehart Reply Decl. ¶ 41; Ex. 17, INS 2008 Tariff Filing at 1–2.[39] Also, INS's claim that it has no ability to control the jurisdiction of the traffic tendered to its network, *see* Schill Decl. ¶¶ 5, 34, is inaccurate. **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

In sum, it remains undisputed—indeed, INS altogether failed to address the issue—that there is a major disconnect between its stated PIU factor and cost allocations, and that INS has understated the PIU factor associated with access stimulation traffic. INS's discussion of the *INS Order*, and its justifications for the shift toward interstate traffic, also do not address these

---

[39] The evidence strongly suggests that the major influx in access stimulation traffic (which appears to have begun in late 2005) is the reason for the change, and not improvements in its monitoring abilities. *See* Rhinehart Reply Decl. ¶ 41.

significant concerns. Accordingly, the Commission should find INS's CEA rates to be unreasonable and determine whether it has engaged in "furtive concealment." *See ACS*, 290 F.3d at 413.

### F. The Unreliability of INS's Test Period Traffic Forecasts.

As Mr. Rhinehart demonstrates in his initial declaration, INS has underestimated demand by an average 240 million minutes per year, and in some years that number was as high as 400 million minutes. *See* Rhinehart Decl. ¶¶ 34–35. Mr. Rhinehart further pointed out that INS's inability to forecast demand accurately not only raises questions as to the both accuracy and reasonableness of its rates, but it also has resulted in INS's over earning its authorized rate of return in a number of years. *See id.* ¶ 36; *see also* AT&T Legal Analysis at 60.

In its response, INS admits that it has consistently underestimated the demand for its CEA service and it does not dispute that it has over-earned its authorized rate of return in a number of years (sometimes to a significant degree). *See* Schill Decl. ¶ 39; INS Legal Analysis at 60; INS Answer ¶ 131. INS also does not deny that that its failure to forecast accurately demand for its CEA service has impacted its rates. Instead, INS provides excuses. And these excuses are unsupported by any back-up cost support or other data that bears on the reliability of the methodology INS used in its traffic forecasting.

INS's first excuse is that forecasting "is difficult" and that it "developed a model in a good faith attempt to forecast" traffic but that there are variables beyond its control. *See* Schill Decl. ¶ 37; INS Legal Analysis at 59–60. However, the fact that forecasting is "difficult" does not justify INS's failure to develop a more reliable forecasting model as its model in early years continued to prove defective. And INS's failure to produce the data on which its purported forecasting model is based is itself a cause for concern.

INS's second excuse—that much of the variation is "due to fluctuations in access stimulation traffic," *see* Schill Decl. ¶ 38; INS Legal Analysis at 60, is at best an over-simplification. INS's own work papers show **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** *See* Rhinehart Reply Decl. ¶ 45; Ex. 2, INS Worksheet at Aueron_02698–99. Moreover, INS's excuse that it has no control over access stimulation traffic on its network rings hollow, **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

INS's third excuse is that its forecasts are actually "more accurate" than Mr. Rhinehart suggests, and it uses percentages (rather than minutes) in an attempt to prove its point. *See* Schill Decl. ¶ 39. This argument is flawed on many levels. To begin, a forecast is either accurate, or it is not. INS's traffic forecasts were not accurate in any year. But instead of addressing this concern, or providing data to justify its claims as to its forecasting methodology, INS contends that its forecasting was "more accurate" than portrayed because in *percentage* terms, in a few hand-picked years, its forecasts were only off by 5-6%. *See id.* The problem with this position is that CEA rates are a function of revenue requirement divided by forecasted traffic, and so INS's projected minutes (i.e., the data used in Mr. Rhinehart's analysis)—rather than percentages—are the critical input. *See* Rhinehart Decl. ¶¶ 46–47. And where projected minutes are concerned, INS does not dispute that it understated demand by an average 240 million minutes per year for the test period up to and including the 7/1/10 to 6/30/11 test period. *See id*. ¶ 47.

Moreover, it is telling that the only time that INS adjusted its rates in advance of its bi-annual tariff filing was in 2013 when it concluded that a 5.7% decline miss in its prior forecast necessitated its making an out-of-year filing and (unlawfully) raising its CEA rate by 44 percent (from $0.00623 per minute to $0.00896 per minute). The fact that INS took this step completely undermines Mr. Schill's claim that forecast inaccuracy in the range of 5-6% is not significant. Further, it raises the question why INS did not make similar out-of-year filings when INS underestimated demand by more than 5% in every one of the test period forecasts discussed by Mr. Rhinehart and for some forecasts that miss was much higher, including one forecast where the percentage difference was 22% and in another 31%. *See* Rhinehart Decl. ¶¶ 47–48. Neither Mr. Schill nor INS addresses this issue in their respective presentations.

INS's fourth excuse is that the mis-forecasting is not a concern because its rate of return has not exceeded the maximums. *See* Schill Decl. ¶ 41. But in making this argument, INS focuses only on the years since AT&T began to withhold payments. In the years prior to that—*i.e.*, in the years where AT&T paid millions for illegitimate CEA traffic—INS exceeded its rate of return on several occasions, as its own Tariff Filings make clear. *See* Rhinehart Decl. ¶ 36, note 44. Also, INS's focus on a negative rate of return in recent years is also misleading, because those rates of return are principally the product of INS's improper inclusion of "Uncollectible Revenues" in its revenue requirement. *See id*. ¶ 43.

Fifth, and finally, INS speculates that AT&T was responsible for the inaccuracies in its forecasting, and it further speculates that AT&T's wholesale business is the "only logical explanation" for the disappearance of traffic from INS's network. *See* Schill Decl. ¶ 42. **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted]

[redacted] **[[END HIGHLY CONFIDENTIAL]]** So the "logical explanation" for the disappearance of the traffic is not AT&T's wholesale traffic; rather, the more likely explanation is that other carriers have found a way to bypass INS's network. *See* Rhinehart Reply Decl. ¶ 51.

In sum, instead of providing data or even explanations for the problems that AT&T identified with INS's forecasting, INS has provided only unsupported excuses. Accordingly, the Commission should find INS's CEA rates to be unreasonable, and that INS has engaged in "furtive concealment." *See ACS*, 290 F.3d at 413.

### G. INS's Improper Inclusion of "Uncollectible Revenues."

Finally, INS's interstate CEA rates are also inflated as a result of INS's improper inclusion of so-called "Uncollectible Revenues" in its revenue requirements. *See* AT&T Legal Analysis at 61–63. As explained in the Legal Analysis, a carrier may include "Uncollectible Revenues" in its revenue requirement only if those amounts were properly billed. *See id.* at 61–62. Furthermore, INS's inclusion of "Uncollectible Revenues" is otherwise unjustified, because (i) **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** (ii) the amounts at issue are subject to bona fide disputes contending that they were not properly billed and (iii) INS's own tariff both anticipates and permits the withholding of disputed amounts. *See id*. at 62. As Mr. Rhinehart demonstrates in his declaration, the potential rate impact of this practice was between 0.074 cents per minute and 0.659 cents per minute, which cost is being borne by INS's other CEA customers. *See* Rhinehart Decl. ¶¶ 41-42. Indeed, since 2016, INS's CEA rate has been inflated by almost $0.003 per minute as a result of this practice. *See* AT&T Legal Analysis at 63, note 17.

In its response, INS ignores many of these concerns and instead focuses tangentially on whether the revenues at issue were "properly billed" or "known direct costs." *See* Schill Decl. ¶¶ 44–45; INS Legal Analysis at 61–62. First, and most consequentially, INS does not dispute the rate impact of its inclusion of "Uncollectible Revenues" in its revenue requirement. *See* INS Legal Analysis at 61–62; INS Answer ¶¶ 132–33. A major consequence of this practice is intergenerational billing, which INS also does not discuss. Should INS prevail and collect these "uncollectible" revenues, the beneficiaries of the future reduction in INS's revenue requirement will not be the same as the group that bore the burden of the inclusion of the "Uncollectible Revenues" in that requirement.[40] *See* Rhinehart Reply Decl. ¶ 56. And the situation is worse if INS does *not* prevail—it is questionable whether INS will reduce its rate base in that event. *See id*.

Second, INS also concedes that **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** and that its own tariff anticipates and permits withholding of disputed amounts. *See id*. Rather, INS asserts that these "Uncollectible Revenues" are "known direct costs." *See* Schill Decl. ¶ 44; INS Legal Analysis at 61–62. The problem with this assertion is that INS is **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** *See* Rhinehart Reply Decl. ¶ 54. Per the Commission's accounting rules, if INS is truly of the belief that the amounts were properly

[40] Similarly, INS ignores the issue of ratepayer fairness—that is, the fact that INS's other CEA customers are being required to bear the cost of this practice. *See* Rhinehart Reply Decl. ¶ 55.

billed[41] and **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

*See* Rhinehart Reply Decl. ¶ 54.[42]

For these reasons, and the reasons discussed in AT&T's Legal Analysis, there is no justification for INS's treatment of "Uncollectible Revenues," which practice has inflated its rates. The Commission should accordingly find that INS's rate are not just and reasonable.

## CONCLUSION

For the reasons set forth above, as well as in its other pleadings, the Commission should reject INS's affirmative defenses and grant the relief that AT&T has requested in its Formal Complaint.

[41] INS finds support for its inclusion of "Uncollectible Revenues" in the revenue requirement on the basis that the amounts have been "properly billed." *See* Schill Decl. ¶ 54. But this argument is circular and ignores the fact that both Sprint and AT&T have withheld payment on the ground that the amounts at issue were **not** properly billed and litigation as to that issue is pending. *See* Rhinehart Reply Decl. ¶ 57.

[42] Also, despite INS's suggestion that "Uncollectible Revenues" have always been a part of its revenue requirement, its 2008 Tariff Filing does not record them in the revenue requirement, despite an acknowledgement that there was a significant increase starting in 2007.

Respectfully submitted,

Michael J. Hunseder

Letty Friesen
AT&T SERVICES, INC
161 Inverness Drive West
Englewood, CO 80112
(303) 299-5708
(281) 664-9858 (fax)

James F. Bendernagel, Jr.
Michael J. Hunseder
Spencer Driscoll
Morgan Lindsay
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
jbendernagel@sidley.com
mhunseder@sidley.com
(202) 736-8000
(202) 736-8711 (fax)

Brian A. McAleenan
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
(312) 853-7000
(312) 853-7036 (fax)

Dated: July 5, 2017

*Counsel for AT&T Corp.*

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | |
|---|---|
| **In the Matter of**<br><br>**AT&T CORP.**<br>**One AT&T Way**<br>**Bedminster, NJ 07921**<br>**(202) 457-3090**<br><br>***Complainant,***<br><br>***v*.**<br><br>**IOWA NETWORK SERVICES, INC.**<br>**d/b/a Aureon Network Services**<br>**7760 Office Plaza Drive South**<br>**West Des Moines, IA 50266**<br>**(515) 830-0110**<br><br>***Defendant*.** | **Proceeding Number 17-56**<br>**File No. EB-17-MD-001** |

**REPLY DECLARATION OF**
**DANIEL P. RHINEHART**

I, Daniel P. Rhinehart, of full age, hereby declare and certify as follows:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant AT&T Corp. ("AT&T"), and my job title is Directory-Regulatory. My responsibilities in that job as well as my prior experience are set forth in the initial declaration that I submitted in this proceeding on June 8, 2017.

2. In that earlier declaration, I described the work I had done reviewing INS's CEA rates and the support for those rates, and I identified and explained my concerns regarding the reasonableness of INS's CEA rates. As a result of that work, I noted that INS's rates had remained relatively flat over the past 30 years and contrasted that situation to both (i) the trend for switched access rates more generally and (ii) the fact that INS had more aggressively lowered

the rates it charges to other entities. I also expressed skepticism as to INS's apparent inability to lower its rates and discussed a number of specific issues pertaining to various aspects of INS's prior rate submissions, including its handling of the Access Division's network costs, its apparent inability to reliably and accurately forecast demand for its CEA service, and its inclusion of so-called "Uncollectible Revenues" in the Access Division's revenue requirement even though the amounts at issue were being challenged as not having been properly billed, **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** and INS was still seeking to collect them.

3. In this reply declaration,[1] I have been asked to comment on INS's answering submission, particularly the sections that address the matters discussed in my initial declaration. In that connection, I have reviewed the declaration of Jeff Schill as well as the sections of INS's Legal Analysis that discuss ratemaking generally (*see* Legal Analysis in Support of the Answer of INS, at 29–43 (filed Jun. 28, 2017) ("INS Legal Analysis")) and that respond to the specific issues raised in my initial declaration (*see id.* at 43–64).

**4.** As discussed in greater detail below, neither Mr. Schill nor INS has responded adequately to the specific concerns raised in my earlier declaration. With respect to the Access Division's network costs (which account for as much as 75 percent of its revenue requirement (*see* Rhinehart Decl. ¶ 15 Table B)), INS still has not produced the data needed to evaluate the reasonableness of the lease costs that the Access Division pays to use INS's network. In fact, Mr. Schill's discussion of the treatment of these costs appears to substantiate my concern that the network costs allocated to the Access Division are excessive. Likewise, INS has not justified its

[1] To distinguish between my initial declaration and this reply declaration, my initial declaration will be cited as "Rhinehart Decl.," whereas this declaration will be cited as "Rhinehart Reply Decl."

inclusion of "Uncollectible Revenues" in the Access Division's revenue requirement, and its claim that it **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

5. The remainder of my reply declaration is organized as follows. Part I sets forth a number of general observation that I have regarding various statements made by either Mr. Schill or INS about the Commission's rate regulation regime. In Part II I respond to Mr. Schill's comments regarding the specific concerns that I identified in my initial declaration.

## I. General Observations Regarding the Commission's Rate Regulation Regime

6. Before discussing Mr. Schill's specific criticisms of my declaration, I would like to make a few general observations regarding Mr. Schill's testimony as well as INS's discussion in its Legal Analysis of the manner in which rates are regulated on a rate of return basis.

7. *First,* I am perplexed by Mr. Schill's suggestion that I do not have the requisite expertise to address the reasonableness of INS's rates. In making this point, Mr. Schill does not question the fact that I am familiar with the manner in which rates are calculated by Local Exchange Carriers ("LECs") that are regulated on a rate of return basis. INS Answer to the Formal Complaint of AT&T Corp., Exhibit A, Declaration of Jeff Schill ¶ 4 (filed Jun. 28, 2017) ("Schill Decl."). Instead, he argues that INS is a "dominant carrier," and not a "Rate of Return Carrier" and implies that that distinction has some significance. *Id*. Putting to one side what INS's proper classification is as a CEA provider, there is no question that INS submits its rates pursuant to the same rules that apply to "Rate of Return Carriers" and that the exact same type of

analysis used in evaluating the rates of such carriers applies to INS's rates.[2] In fact, at various points in his declaration, Mr. Schill seeks to justify the reasonableness of INS's rates on the grounds that INS purportedly calculated its rates based on those rules. *See, e.g.*, INS Legal Analysis at 39.

8. *Second*, in its Legal Analysis INS discusses the "original form of ratesetting utilized by the FCC" (*see* INS Legal Analysis at 30), and seems to suggest that INS follows that approach to the letter. However, INS's method of calculating its rates is, in actuality, a variation of the way in which cost of capital analysis is generally done. That is because a major component of the Access Division's costs, i.e., its network costs, are not handled in the traditional manner. Because INS does not own its network facilities but rather leases them from an affiliate, those costs are handled entirely as an expense. As a consequence, no capital cost analysis is done as to the network cost component, which accounts for as much as 75 percent of the Access Division's overall revenue requirement. Further, there is no detail provided in INS's regulatory filings as to the derivation of those lease costs, nor was such material provided as part of the pre-filing discovery process.

9. *Third*, the fact that a carrier regulated on a rate of return basis follows the Commission's procedures in submitting its rates does not, as both Mr. Schill and INS assert repeatedly throughout their respective submissions (*see, e.g.*, Schill Decl. ¶¶ 14, 20; INS Legal Analysis at 15, 31, 51), mean that the resulting rates are reasonable. In addition to following the Commission's procedures, it is imperative that, among other things, the cost inputs used in

[2] *E.g.*, 47 C.F.R. § 61.38 (for a tariff change, the carrier should submit: "(i) A cost of service study for all elements for the most recent 12 month period; (ii) A study containing a projection of costs for a representative 12 month period; (iii) Estimates of the effect of the changed matter on the traffic and revenues from the service to which the changed matter applies, the issuing carrier's other service classifications, and the carrier's overall traffic and revenues.").

developing the rates be shown to be reasonable. Further, the normal way that the reasonableness of those cost inputs would be assessed is for the back-up support for those cost inputs to be provided. In the case of the lease costs that are embedded in INS's Cable & Wire expense account, however, no such data have been provided – not in INS's regulatory filings, not in the discovery material produced to date, and not as an exhibit to Mr. Schill's declaration. In fact, the lease costs are not separately broken out in INS's regulatory filings, but are rather lumped together with INS's other network expenses. It is a proverbial "black box" and thus not capable of being scrutinized based on the information that INS has elected to disclose.

10. *Fourth*, the fact that INS's rates did not generate revenues that exceeded INS's authorized rate of return does not, as INS contends (*see*, *e.g.*, INS Legal Analysis at 39) mean that its rates are reasonable. If, for example, the revenue requirement was inflated by the inclusion of inappropriate costs, that would render any such result meaningless. Likewise, the failure to properly project demand would also undermine any such conclusion. Further, these observations are equally applicable to a rate that purportedly generates a negative rate of return.

11. *Fifth*, the fact that INS's rate filings were prepared with the assistance of outside consultants (*see* INS Legal Analysis at 39) does not establish that the resulting rates are reasonable. Similarly, the fact that a regulatory agency may have reached certain conclusions in some earlier rate proceeding does not, as INS repeatedly seems to suggest, inoculate that carrier's rates from further scrutiny as to a particular issue in a later rate proceeding. Indeed, INS's apparent reliance on Commission statements made in INS's initial tariff proceeding almost 30 years ago regarding cross subsidization (*see, e.g.*, INS Legal Analysis at 41–42) is at odds with my understanding of the Commission's regulatory rate regime.

12. *Sixth*, the fact that INS's CEA rate is a flat per minute rate that combines both switching and transport does not, as INS seems to suggest (*see* INS Legal Analysis at 39), mean that it is reasonable. Indeed, the mere structure of a rate says nothing about its reasonableness. To determine the reasonableness of a flat per-minute, combined rate, one must do the same type of rate reasonableness analysis that is done with respect to any other rate. Similarly, the fact that INS's rates are not subsidized by the Connect America Fund or the Universal Service Fund does not mean, as INS asserts (*see* INS Legal Analysis at 41), that its rates are reasonable. The lack of such funding is irrelevant to the rate reasonableness determination.

13. *Finally,* repeated assertions that its allocations "are compliant with the Commission's accounting rules," that its PIU factor is "based on the best available information that is has," and that its forecasting is based on a "good faith attempt," (*see* INS Legal Analysis at 51, 59), and so on are not a substitute for actual evidence demonstrating that the carrier's rates are reasonable. Yet throughout their respective submissions, both Mr. Schill and INS resort to such pronouncements, and such pronouncements alone, in responding to specific concerns that I raised as to INS's rates in my initial declaration. As I explain in greater detail below, those concerns remain unanswered.

## II. Responses to INS's Criticisms Regarding the Specific Concerns Addressed in My Initial Declaration

14. In my initial declaration I raised seven specific concerns regarding INS's rates. In his declaration, Mr. Schill purports to address each of those concerns. Those concerns are also addressed in INS's Legal Analysis. However, the points raised in INS's Legal Analysis are nearly identical to the points raised in Mr. Schill's declaration. Consequently, my declaration focuses and cites to Mr. Schill's declaration.

### A. The Overall Level of INS's CEA Rates

15. Neither Mr. Schill nor INS takes issue with my observation that INS's CEA rates have remained relatively constant over the past thirty years, nor do they dispute that switched access rates generally and the rates that INS charges for certain of its non-CEA services have decreased more dramatically. Instead, they take the position that that INS's CEA rates are, in essence, unique unto themselves; that data regarding other rates and rate trends is simply irrelevant. *See* Schill Decl. ¶¶ 5, 7–13; INS Legal Analysis at 43–47. That position, as well as Mr. Schill's other arguments regarding the level of INS's CEA rates, is groundless.

16. *First,* Mr. Schill's claim that "CEA service is not one that is comparable to access service that is provided by other carriers" (*see* Schill Decl. ¶ 5) is difficult to reconcile with INS's claim that it is just another form of switched access service. *See* INS Legal Analysis at 22 (discussing whether INS's tariff authorizes the billing of CEA rates for access stimulation traffic). Further, Mr. Schill overstates the potential impact on rates of differences between CEA service and other switch services. For example, the fact that CEA service is provided in rural areas may account for some of the differences in historic pricing trends, but it does not explain the huge differential that exists between the trend line for INS's CEA serve (a decline of about 23% in the period 1988 to 2010) and the trend line for switched access rates generally (a decline of about 80% over the same period).

17. *Second*, Mr. Schill's criticisms of my observations regarding the potential rate impacts of INS's explosive growth and the fact that INS's switching equipment is largely depreciated (*see* Schill Decl. ¶ 9) are not accurate. Indeed, Mr. Schill's assertion that depreciation expense is no longer a significant rate driver proves my point. Further, the tremendous growth in call volumes that INS has experienced (particularly during the period 2004

to 2011) also supports the conclusion that INS's CEA rates should have declined more significantly than they have. Additionally, the fact that INS's call volumes have declined somewhat since 2011 does not explain why during the period 1998 to 2010 switched access rates declined by almost 80 percent but INS's rates only declined by 23 percent.

18. *Third*, Mr. Schill's response to my observation that INS's rates do not appear to have benefited from cost efficiency gains (*see id.* ¶ 10) is a *non-sequitur*. Rather than present evidence showing that such gains were actually realized and are reflected in INS's CEA rates, Mr. Schill instead assumes (without presenting any evidentiary support) that such gains were achieved but then asserts (again without any evidentiary support) that they were "offset by increases in access stimulation traffic volumes, and the need to augment facilities to handle that traffic." This claim not only is unsupported but does not make economic sense. Efficiency gains are generally not lost with the addition of capacity, especially when that capacity is being added to handle large volumes of traffic directed to a single location (or a handful of locations), which is generally the case with access stimulation traffic. In fact, in such circumstances, one would expect that the increased volumes would result in the realization of economies of scale.

19. *Fourth*, Mr. Schill's assertion that "the reductions in the **[[BEGIN THIRD PARTY HIGHLY CONFIDENTIAL]]** [redacted] **[[END THIRD PARTY HIGHLY CONFIDENTIAL]]** and the **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** do not have any bearing on whether [INS's] CEA service rates must be reduced" (*see id.* ¶ 12) is wholly unconvincing. To begin with, there is no question that such rate reductions occurred with respect to those services and that they were large. Further, it defies logic to contend that providing CEA service is **more costly** than providing small increments of capacity that are

tailored to specific customer needs. Indeed, that cost proposition is completely at odds with the economic rationale relied on by the Commission in initially approving CEA service in 1988. Additionally, the claim that the Commission's *Alpine* decision dramatically changed the transport costs incurred by the Access Division is not only unsupported, it was disregarded by the Commission in *Alpine* because it could not be substantiated. *See AT&T v. Alpine Commc'ns,* 27 FCC Rcd. 11511, ¶ 48 (2012) ("The parties stipulated, however, that 'INS has not quantified any resulting actual reduction in the rates paid by IXCs.'").

20. *Finally*, Mr. Schill effectively concedes that INS's CEA rates are excessive in discussing the rate impact of INS's inclusion of "Uncollectible Revenues" in the Access Division's revenue requirement. *See* Schill Decl. ¶ 12. In that connection, he admits that the rate "would be $0.00673 – a full half cent less than in 1989" (*id.* ¶ 10) and more than two tenths of a cent less than the current rate. Moreover, as I pointed out in my initial declaration that rate could be as low as $0.003624 per minute. *See* Rhinehart Decl. ¶12.

**B. INS's Handling of Network Investment Costs**

21. Mr. Schill does not dispute that network costs constitute a significant percentage of the Access Division's overall revenue requirement. He also confirms that the Access Division leases its network facilities from another INS division, i.e., the IXC Division. *See* Schill Decl. ¶ 14. Mr. Schill further contends that the Access Division is "required by the FCC to lease capacity from the IXC Division" and claims that I alleged that "[INS]'s investments in its fiber network have not been accurately recorded in [INS's] books," citing to paragraph 14 of my initial declaration. *See id.* Neither of these allegations is accurate. Additionally, Mr. Schill's discussion of the lease costs that the Access Division pays to the IXC Division is deficient in multiple respects.

22. *First,* at no point in my initial declaration did I assert that INS's investment in its fiber network was not accurately recorded on INS's books. Nowhere in the paragraph that Mr. Schill cites as support for that proposition (i.e., paragraph 14) do I say anything about the lawfulness or accuracy of INS's accounting practices. To the contrary, in that paragraph, I accurately reported that none of the investment in INS's fiber network is recorded on the Access Division's books, and I further reported accurately that "all investment in Central Office Transmission Equipment (Account 2230) and in Cable & Wire Facilities (Account 2410) has been recorded on the books of INS's other divisions" – which is exactly what INS's Tariff Filings disclose. *See* Rhinehart Decl. ¶ 14.

23. *Second,* Mr. Schill's assertion that the Access Division is "required by the FCC to lease capacity from the IXC Division" (*see* Schill Decl. ¶ 14) is not accurate. While it is true that the Commission's regulations require the Access Division to "have separate books of account" and prohibit joint ownership of "transmission or switching facilities," (*see In re Policy & Rules Concerning Rates for Competitive Common Carrier Servs. & Facilities Authorizations Therefor*, 98 F.C.C.2d 1191, ¶ 9 (1984) ("*Fifth Report and Order*")), they do not "require" the Access Division to lease such facilities from the IXC Division, and the Access Division does not lease its switching equipment from the IXC Division. Further, no such requirement is included in the Commission's 1988 decision (what Mr. Schill refers to as the FCC's 214 Order) approving INS's initial Section 214 application. That decision did approve INS's leasing of network transport capacity from the IXC Division (based on the facts and circumstances at the time of such approval) but it did not "require" that approach.

24. *Third,* contrary to Mr. Schill's claims, INS's Tariff Filings do not break out on a separate basis the lease costs that the Access Division pays to the IXC Division, nor do they

report that the amounts in the Cable &Wire Facilities account are equal to the lease payments made by the Access Division to the IXC Division. In fact, there is no specific mention of lease costs or of the IXC Division in INS's Tariff Filings. That is not to say that such costs are not included the Access Division's revenue requirement. I have no doubt that they are. My simple point is that they are not broken out separately but are rather bunched together with INS's other network costs. And, even more significantly, no documentation is provided as to the method by which the lease costs are calculated, nor is any information provided regarding the reasonableness of those costs as compared to alternatives. Further, Mr. Schill's assertion that the Commission's accounting rules do not require the tariff cost support to include lease rates (*see* Schill Decl. ¶ 16) is a bit disingenuous given (i) that those rules were developed based on the assumption that the regulated carrier would own its own transmission facilities and (ii) in this proceeding, the reasonableness of those lease costs, which account for as much as 75 percent of the Access Division revenue requirement, has now been challenged.

25. *Fourth*, Mr. Schill's claim that INS's network lease costs "are periodically tested for reasonableness based on an analysis of the costs derived from the IXC Division (*see id.*) is interesting but does not prove that INS's rates are, in fact, reasonable. The test results, if they had been made available, would clearly be relevant to such an assessment – but they have not been made available. They are not included (or even mentioned) in INS's Tariff Filings, they were not produced in connection with the pre-filing discovery process (even though that type of material was requested), and they are not attached as exhibits to Mr. Schill's declaration or INS's answering submission. Consequently, neither I nor AT&T has had an opportunity to review them.

26. *Fifth,* Mr. Schill's assertion that INS's "tariff filings do disclose all the information necessary to calculate the lease rate paid to the IXC Division for fiber" (*see id.*) is problematic in multiple respects. To begin with, the metric that Mr. Schill claims can be derived (i.e., "dividing the transport costs by the reported minutes of use") is not the metric that he uses in Table 1 to his declaration (i.e., equivalent cost per DSO mile), which I agree is the more relevant metric. Additionally, Mr. Schill's embrace of a metric based on "minutes of use" ("mous") in this part of his testimony is a little difficult to reconcile with his later criticism of the metric set forth in Table F of my presentation, which is a very similar metric (i.e., projected lease costs per projected demand or "lease cost/mou"). *See* Rhinehart Decl. ¶ 26. It should further be noted that the type of metric that Mr. Schill sets forth in Table 1, or for that matter any metric, is not, nor can it be, on a stand-alone basis, determinative of a cost's reasonableness. In order to make that determination, the metric needs to be compared to other data (such as comparable data developed for other INS services that are offered on a competitive basis). Indeed, that was the purpose of the analysis in paragraphs 16 and 17 of my initial declaration in which I compared the "DS-3 route mile rate" that the Access Division is charged to the "DS-3 route mile rate" that **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** pays for transport capacity over the very route that the Access Division uses to transport the majority of the access stimulation traffic at issue in this case. As I explained, that comparison shows that the rate paid by the Access Division **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** *See id.* ¶ 17.

27. *Sixth*, Mr. Schill's criticism of my calculation of the DS-3 route mile rate paid by the Access Division, i.e., **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** (*see* Schill Decl. ¶ 18) is supported only by bald claims of purportedly correct computations. The generic rule of thumb that I used to convert the DS-0 route mile rate that Mr. Creveling (INS's former CFO) had provided to an equivalent DS-3 route mile rate is a simple approach that is particularly useful in situations, like this one, where more detailed information is not available. (Much of the information set forth on Mr. Schill's Table 1 is not publicly available nor does his table document the sources of the included data). It should further be noted that even with access to the data included on Table 1, Mr. Schill still used a rule of thumb **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** Indeed, that rule of thumb is very similar to the rule of thumb that I used to covert the DS-0 rate that had been provided to a DS-1 value. Instead of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** I used 24, which as discussed below produces a lower DS-3 route mile rate for the Access Division, **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

28. *Seventh*, Mr. Schill's criticism of the rule of thumb that I used in comparing the rate charged to the Access Division to the rates paid by GLCC does not change my bottom line conclusion that the lease rates charged to the Access Division are excessive. Indeed, the DS-3 route mile rate calculated by Mr. Schill **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** actually suggests that the gap between the

rates charged to the Access division and the rates paid by **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** is even greater. Further, Mr. Schill's testimony that the "cost of the transmission equipment used to provision a DS-3 circuit is calculated in the amount of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** (*see* Schill Decl. ¶ 23) is difficult to reconcile with the fact that INS's records show that it has provided DS-3 circuits **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** Either Mr. Schill's cost calculation is wrong, or INS is selling those circuits to **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** at a significant loss. Additionally, to the extent that the Access Division is in effect paying **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** that strongly suggests that the amounts paid by the Access Division are significantly above market rates, and that INS's CEA service is subsidizing INS's other transport services.

29. *Finally*, Mr. Schill's claim that it is not reasonable to directly compare the rates that the Access Division pays for transport to the rate paid by GLLC for a single point to point connection (*see* Schill Decl. ¶ 18) might have some validity if we were simply discussing traditional CEA service where the traffic at issue was somewhat evenly disbursed across INS's entire 2700 mile fiber network. But that is not the situation that exists with respect to access stimulation traffic, the majority of which moves over a limited number of point to point connections. As INS's documents show, more than **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** of the Access Division's traffic is access stimulation traffic (*see* AT&T Ex. 2, INS Worksheet (Aureon_02696-02708), at Aueron_02697-

98) and it is impossible to deny that there are not significant economies of scale in moving large volumes of traffic over a limited number of point to point connections. But none of those economies of scale, which are likely extensive, seem to be shared. Certainly, the alleged "volume discount" that INS recently offered in its tariff does not share any of those cost savings. In fact, the cost information filed in support of that rate shows that the lower rate results exclusively from INS's decision not to include "Uncollectible Revenues" in the applicable revenue requirement. *See* Rhinehart Decl. ¶¶ 12, 38 n. 48, 43, note 55.

30. In sum, rather than demonstrating that the lease costs that the Access Division pays are reasonable, Mr. Schill's declaration reinforces the conclusion that they are excessive.

**C. INS's Allocation of Costs for Network Facilities**

31. Mr. Schill does not dispute that the Access Division's allocated share of the costs of Cable & Wireless Facilities went from about 45% to 48% (during 2004-2008) to above 70% (in 2013-17) as shown on Table C to my initial declaration, nor does he deny that the Cable & Wire Facilities costs allocated to INS's other divisions actually declined from about $14 million in 2004 to about $5 million in 2017. Instead, he categorically declares that such comparisons are meaningless because INS's "cost allocations for the Access Division's use of [INS]'s fiber network are compliant with the Commission's accounting rules," those cost allocations "are based on the actual use of facilities provided to the Access Division" and the lease rates for those facilities "are at or below the fully distributed cost of the network facilities provided." *See* Schill Decl. ¶ 20. Mr. Schill further asserts that "[a]ny attempt to use generalized Access Division cost relationships from year to year to determine the reasonableness of one component of expense (e.g., charges for network costs) is improper, especially when the facilities being leased to the Access Division remain fairly constant from year to year." *Id.* ¶ 20. He also presents a table that

purports to show that network expense has remained fairly constant from year to year. *See id.* ¶ 26, Table 1.

32. As I have previously explained, this type of rhetoric is not a substitute for the submission of evidence that directly addresses the specific matters of concern that have been identified. Nowhere in his declaration does Mr. Schill specifically address and explain why the percentage of Cable & Wire Facilities costs allocated to the Access Division went from below 50% in 2008 to above 70% in 2013. Likewise, no explanation is provided as to why the amount of Cable and Wire Facilities cost allocated to INS's other divisions declined from about $14 million to about $5 million. And no explanation is provided as to why the Cable & Wire Facilities costs allocated to the Access Division went from almost $18 million in 2010 to less than $10 million in 2012 and then back up to almost $14 million, which does not appear to comport with Mr. Schill's claim that the facilities being leased to the Access Division "remain fairly constant form year to year." *See id.* ¶ 20. Perhaps there are reasonable explanations for these changes. However, such explanations have not been provided, and Mr. Schill's reluctance to even address them suggests a different conclusion.

33. Mr. Schill's attachment of Table 1 to his declaration certainly does not shed any light on the answers to these questions. Indeed, Table 1 raises more questions than it provides answers. To begin, Table 1 does not indicate the sources of the data set forth on Table 1, and the data do not appear to match the data set forth in INS's Tariff Filings. Moreover, to the extent that some of the data are drawn from documents that INS produced during the pre-filing discovery process, bates numbers should have been provided. In addition, explanations as to whether the data in a column was derived or assumed should have been provided. And, given

Mr. Schill's criticism of my failure to include in Table H percentages showing year to year variations (*see* Schill Decl. ¶ 39), his Table 1 should have included such percentages.[3]

34. Beyond that, an explanation should have been provided as to why the amounts set forth in the column entitled "Equivalent Cost Per DS-0 Mile" seem to be at odds with the estimate of that rate **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** that Mr. Creveling provided in his deposition in the *Alpine* case. Additionally, the levels of the Equivalent Cost Per DS-0 Mile rate set forth in Table 1 do not appear to be "fairly constant from year to year." *See* Schill Decl. ¶ 20. To the contrary, there is a fair amount of variation in the rate and that variation does not seem to match the corresponding changes in INS's CEA rates. For example, in 2013 INS's projected network costs increased from about $10 million to about $14 million, its projected traffic volumes declined by about 400 million minutes, and the CEA rate was increased by about 44% (from $0.0623 per minute to $0.00896 per minute). *See* Rhinehart Decl. ¶¶ 7 (CEA rate change), 18, Table C (network costs change), 34, Table H (volume change). Yet the Equivalent Cost Per DS-0 miles appears to have decreased from $0.08523 to $0.07364, a decline of about 14 percent. That does not make sense.

35. Finally, Mr. Schill's comment that "[it] is not apparent from Mr. Rhinehart's comments or observations that this analysis was performed" (*see id.* ¶ 20) is perplexing. The analysis that he apparently is referencing is "an analysis of the cost and use of the facilities being provided." *See id.* (prior sentence). However, to do an analysis beyond the analyses included in my initial declaration (which are based either on public data or that data that INS has produced), one would need access to additional information, particularly detailed information regarding the

[3] Such percentages would have shown year to year variation as follows: an increase of about 16 percent (2010 to 2012), a decrease of about 14 percent (2012 to 2013), an increase of about 32 percent (2013 to 2014), and a decrease of 9 percent (2014 to 2016).

computation and reasonableness of the lease costs that are charged to the Access Division and how those lease costs compare to the rates that INS charges to its other customers, appropriately adjusted. But INS has not produced such material. Indeed, it does not appear to have provided all of the source data for Table 1, and it certainly has not produced the results of its purported periodic reasonableness testing of the leases costs charged to the Access Division. In short, INS has not demonstrated the reasonableness of the network costs that underlie its tariffed CEA rates.

**D. INS's Calculation and Allocation of Lease Costs**

36. In this section of my initial declaration, I presented three tables based on data derived from either INS's Tariff Filings or INS internal documents produced in discovery. Each of these tables set forth information relating to INS's network costs, and as I noted in my initial declaration, raised "serious questions as to the reasonableness of INS's allocation of network costs to the Access Division." *See* Rhinehart Decl. ¶ 21. Neither Mr. Schill in his declaration nor INS in its answering submission addresses or answers these questions. Instead, Mr. Schill takes issue with the relevance of each of the tables. His arguments in that regard are not soundly based.

37. In Table D, I compared lease cost forecasts produced by INS for 2010, 2012 and 2013, and expressed concern as to level of variation in those forecasts from year to year, particularly in light of the changes that INS had made in its CEA rates during the period 2010 to 2013. *See id.* ¶¶ 22–23. Rather than directly address those issues, however, Mr. Schill dismisses the comparisons set forth in Table D on the ground that that the lease cost forecasts included in Table D are not specific to the lease costs allocated to the Access Division but relate to the lease costs paid by all of INS's divisions. *See* Schill Decl. ¶ 27. Mr. Schill's criticism is unwarranted. Putting aside that these forecasts were produced by INS in response to AT&T's request for the

back-up support used by INS in preparing its 2010, 2012 and 2013 Tariff filings, Mr. Schill's concern is specifically addressed in note 32 of my declaration, where I pointed out that the year to year variation in the overall lease cost forecasts was consistent with the variation in the lease cost projections included in INS's Tariff Filings, particularly for 2012 and 2013. *See* Rhinehart Decl. ¶ 23, n.32. I also noted that a similar pattern could be seen in the Income Statement Summaries that INS had also produced in response to AT&T's requests for the back-up material. *See id.* Consequently, Mr. Schill's excuse for not specifically addressing the reasons for the changes in the forecasts and their relationship to the changes in INS's CEA rates is no excuse at all.

38. In discussing the trends reflected in the network investment data set forth in Table E, and the "lease cost/mou" data set forth in Table F, Mr. Schill adopts a similar approach. As Table E shows, INS's investment in Cable & Wire Facilities almost tripled between 2010 and 2016, which raises the question of whether the Access Division is being to ask to fund that massive new network investment, notwithstanding the fact that (i) its overall throughput is and has been in decline (during the period 2011 to 2016, demand dropped by more than a billion minutes), (ii) legitimate CEA service (what INS refers to in its work papers as "regular CEA service") has been in a steady year to year decline since at least 2008 (a decline that shows no signs of abating), and (iii) the FCC in 2011 found that access stimulation is a "wasteful arbitrage practice" that should be "curtailed." *See* Rhinehart Decl. ¶¶ 24–25, Table E. Table F, by contrast, uses the lease cost data and demand projections set forth in INS's Tariff Filings to develop the metric "lease cost/mou," which is a rough measure of the efficiency of the Access Division's CEA service. *See id.* ¶¶ 26–27, Table F. For the test periods prior to INS's 2013 Tariff Filing, the "lease cost/mou" metric declined at a rather steady pace. *See id.* ¶ 27.

Beginning in 2013, however, Table F shows that "lease cost/mou" skyrocketed, which as I explained could be the result of declining demand, an over-allocation of network costs, or both. *See id.* Rather than address that issue and the related issues raised by Table E, and present empirical data in support of his position, Mr. Schill instead simply dismisses the concerns without ever seriously addressing them.

39. In sum, the data that I presented in this section go to the heart of the issue of the reasonableness of INS's CEA rates, and in my view, present some serious questions, that neither Mr. Schill nor INS has answered.

**E. INS's Allocation of Costs Between Interstate and Intrastate Traffic**

40. Mr. Schill does not deny that the mix of interstate and intrastate traffic on INS's CEA network has changed dramatically, nor does he take issue with the percentages set forth in Table G to my initial declaration which show that since 2010 more than 80 percent of the Access Division's revenue requirement has been allocated to interstate CEA service, and that in 2016 about 94 percent of the Access Division's revenue requirement was so allocated. See Rhinehart Decl. ¶ 29. Instead, Mr. Schill argues that INS was under no obligation to inform the Commission of this dramatic shift (*see* Schill Decl. ¶¶ 5 ("Rhinehart's Fourth Observation"), 32), and he suggests that the change in the jurisdictional mix was due entirely to modifications in INS's billing systems and improvements in its ability to monitor interstate traffic. *See id.* ¶¶ 33–35. He further contends that that INS "does not have any control over the jurisdiction of the traffic that is sent by IXCs to the CEA network." *See id.* ¶ 33; *see also id.* ¶ 5.

41. To begin with, Mr. Schill's assertion that the dramatic shift in the jurisdictional mix of INS's CEA traffic was "due to upgrades in [INS]'s equipment to better track the jurisdiction of the calls on the CEA network" (*id.* ¶ 33) is not consistent with the explanation that

INS provided in its 2008 Tariff Filing where it attributed the change in its PIU factor to two factors: changes in its ability to monitor the traffic and the huge influx of access stimulation traffic that was predominately interstate in nature. *See* AT&T Ex. 17, INS 2008 Tariff Filing, at 1–2; *see also* Rhinehart Decl. ¶ 30. Given the magnitude of that influx (which appears from INS's Tariff Filings to have begun in late 2005), it seems clear that that change, and not improvements in INS's monitoring abilities, was the principal cause of the dramatic shift that is reflected in Table G to my initial declaration.

42. Further, Mr. Schill's assertion that INS has no ability to control the jurisdiction of the traffic tendered to its network (*see* Schill Decl. ¶¶ 5, 34) is not accurate. In 2005, INS entered into a series of traffic agreements with Competitive Local Exchange Carriers ("CLECs") that were not primarily engaged in the provision of Local Exchange Service, but instead were focused on building access stimulation businesses. *See* AT&T Complaint, Section I.D As Mr. Habiak explains in his initial declaration, access to INS's network was important to their success and by entering into the aforementioned traffic agreements, INS facilitated the rapid growth of access stimulation in Iowa. *See* Habiak Decl. ¶¶ 11-16; *see also* AT&T Complaint § I.D. Indeed, **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** INS has facilitated their ability to engage in mileage pumping – a practice that flourished in Iowa until the Commission's *Alpine* decision was issued.

43. Finally, neither Mr. Schill nor INS responds, or even addresses, the specific potential rate manipulation issues that I identified in my initial declaration: the first involving the apparent disconnect between INS's stated Percent Interstate Use ("PIU") factor, and the second relating to INS's apparent understatement of the PIU factor associated with the access

stimulation traffic on its network.[4] *See* Rhinehart Decl. ¶¶ 32–33. As they do with respect to a number of the specific concerns that I have identified, they either ignore them entirely or dismiss them as "simply without merit." *See, e.g.*, Schill Decl. ¶ 36. But, as I have previously noted, such rhetoric is not a substitute for evidence, and INS's apparent reluctance to address the issues only serves to reinforce the conclusion that its rates are not reasonable.

**F. Reliability of INS's Traffic Forecasts**

44. Neither Mr. Schill nor INS deny that there has been a lot of variation in INS's test period forecasts, nor do they deny that those test period forecasts have been inaccurate. Instead, Mr. Schill asserts that "[f]orecasting traffic over a long time period is difficult, particularly when [INS] has no control over the traffic sent by other carriers over its network." *See* Schill Decl. ¶ 37. He further claims that the variation in INS's test period forecasts is "due to fluctuations in access stimulation traffic" (*see id.* ¶ 38) and contends that the INS's traffic forecasts are "more accurate than Mr. Rhinehart suggests," pointing to percentage difference calculations which in his view (at least with respect to this issue) are "more meaningful." *See id.* ¶ 39. Mr. Schill also speculates, without offering any evidentiary support, that the inaccuracies in INS's traffic forecasts is somehow the result of AT&T's transporting, on a wholesale basis, the long distance traffic of other carriers (*see id*. ¶ 42) and attempts to deflect the fact that in certain years it has over earned its authorized rate of return by pointing to instances where it either projected negative rates of return or allegedly experienced such results. *See id*. ¶ 41. As explained below, I have issues with each of these points.

[4] In its response to AT&T's discovery requests, INS notes that the reference to 78% as it related to access stimulation traffic was a typo – the 78% factor was the factor applicable to all traffic. *See* INS Objections and Responses to Complainant's First Set of Interrogatories, at 12. INS does not, however, indicate what the percentage applicable to the access stimulation traffic was, or otherwise address the specific concerns addressed in my initial declaration.

45. *First*, Mr. Schill's assertion that the test period forecasts have varied "due to fluctuations in access stimulation traffic" is, at best, an over-simplification. **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** Further, Mr. Schill's claim that INS has no control over the access stimulation traffic on its network (*see* Schill Decl. ¶ 37) rings somewhat hollow given that its traffic agreements with the access stimulating CLECs **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** *See* AT&T Complaint, Section I.D.

46. *Second*, Mr. Schill's claim that on a percentage basis, INS's test period forecasts "are actually more accurate than Mr. Rhinehart suggest[ed]" (*see* Schill Decl. ¶ 39) also rings hollow. At bottom, INS's CEA rates are a function of its revenue requirement divided by its forecasted traffic. Consequently, it is important that the traffic forecasts are accurate. To the extent that the traffic forecast is underestimated, the resulting rates will be inflated (all other factors remaining constant) and vice versa.

47. As I pointed out in my initial declaration, for two test periods, INS underestimated the demand by at least 400 million, and for the test periods up to and including the 7/1/10 to 6/30/11 test period, demand was underestimated by an average of 240 million minutes per year. *See* Rhinehart Decl. ¶ 35. In all of these instances, the underestimation worked in INS's favor, and INS made no effort to adjust its rates in advance of its bi-annual tariff filings regardless of the size of the miss. That approach stands in stark contrast to the approach that INS adopted in 2013. Having overestimated the demand for CEA service by less than 200 million minutes, it did not wait to adjust its rates until its next bi-annual tariff filing. It instead made an off-year filing in 2013 and increased its rates by 44 percent (from $0.00623 per minute to $0.00896 per minute).

48. The fact that INS believed that a five percent error in its traffic forecasts was sufficient to require an off-year tariff filing completely undermines Mr. Schill's claim that the percentage differences identified in his testimony support his position that I have overstated the significance of the forecasting inaccuracies discussed in my initial declaration. In this regard, it should also be noted that all of the percentage differences that Mr. Schill calculated for test periods in which the demand was underestimated exceeded the 5 percent threshold that prompted INS's 2013 Tariff Filing, and yet in no instance (even when the percentage difference was over 31 percent) did INS adjust its rates in advance of its bi-annual tariff filing. In his declaration, Mr. Schill simply ignores these issues.

49. *Third*, Mr. Schill adopts a similar approach to the issue of INS's over-earning of its authorized rate of return in certain years. Rather than address the years identified in my declaration where INS reported that it had over-earned its authorized rate of return, he ignores those years and instead focuses on the fact that in recent years, INS has projected negative rates

of return in its Tariff Filings and alleges that in certain years it has under-earned its authorized rate of return. *See* Schill Decl. ¶ 41. However, as I pointed out in my initial declaration, and Mr. Schill effectively admits, those negative rates of return were principally the result of INS's inclusion of "Uncollectible Revenues" in its revenue requirement. *See* Rhinehart Decl. ¶ 43. As discussed below and in my initial declaration, the inclusion of those "Uncollectible Revenues" was improper, and those amounts largely account for the negative returns identified in Mr. Schill's declaration.

50. *Fourth*, Mr. Schill's speculation that the inaccuracies in INS's traffic forecast are "likely the result of AT&T acting as the intermediate carrier for other IXCs" (*see* Schill Decl. ¶¶ 5, 42) is groundless. To begin, it is important to keep in mind that most large facilities-based carriers, like AT&T, provide intermediate carriage, and that as a consequence, the presence of wholesale traffic on a network's like AT&T's is not surprising. In fact, as noted in AT&T's Complaint, INS is both an intermediate carrier and it offers wholesale services. *See* AT&T Complaint § I.B. What is not accurate, however, is the suggestion that the alleged disappearance of the traffic of some large IXCs from INS's network is attributable to AT&T and its wholesale business. **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted]

[redacted] **[[END HIGHLY CONFIDENTIAL]]**

51. *Finally*, Mr. Schill's claim that AT&T's wholesale business is the "only logical explanation" for the disappearance of traffic from INS's network (*see* Schill Decl. ¶ 42) is simply wrong. Another "logical explanation," and the explanation that is probably correct, is that these other carriers have found a way to bypass INS's network by delivering the traffic directly to the access stimulating CLECs' end office switches. Indeed, Mr. Schill acknowledges that INS recently learned that bypass is occurring. *See id.* ¶ 28. Rather than seek to blame AT&T for this practice and the alleged disappearance of traffic from its network, Mr. Schill and INS should instead investigate how this bypass is occurring and whether access stimulating CLECs are using either INS's internet services or INS leased capacity to transport this traffic.

### G. INS's Inclusion of "Uncollectible Revenues" in its Revenue Requirement

52. Mr. Schill does not dispute that INS's inclusion of its so-called "Uncollectible Revenues" in its revenue requirement has had the potential rate impacts set forth in Table J to my initial declaration, nor does either Mr. Schill or INS deny that the inclusion of those amounts effectively required INS's other CEA customers (including AT&T prior to 2013) to pay higher rates for CEA service. *See* Schill Decl. ¶¶ 43–46; INS Legal Analysis at 61–63. He also admits that the amounts at issue relate to INS's ongoing litigation disputes with AT&T and Sprint, and **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** *See id.* Nevertheless, Mr. Schill insists that that those amounts were properly included in INS's revenue requirements. *See id.* I disagree with Mr. Schill's position.

53. *First*, Mr. Schill's claim that the amounts at issue were "properly billed" (*see* Schill Decl. ¶ 45) ignores the fact that both Sprint and AT&T have withheld payment on the ground that the amounts at issue were **not** properly billed and litigation as to that issue is pending. Consequently, the issue of whether the amounts were properly billed has not been settled.

54. *Second,* the assertion by Mr. Schill and INS that the amounts at issue are "known direct cost[s]" (*see id.* ¶ 44; *see also* INS Legal Analysis at 61–62) is hard to reconcile with the fact that INS is **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** In my experience, an uncollectible revenue is considered a known direct costs because the carrier has concluded that collection is not likely and **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** Hence, they are not a known direct cost.

55. *Third,* Mr. Schill wholly ignores the issue of ratepayer fairness. As previously noted, he does not dispute that INS's other CEA customers have been adversely affected by the inclusion of the amounts at issue in INS's revenue requirement, nor does he explain why that is appropriate. Instead, he effectively ignores the issue and blames AT&T for exercising its right to contest INS's improper billing of its CEA rates. *See id*. ¶ 46.

56. *Finally,* Mr. Schill wholly ignores the intergenerational billing issues created by INS's inclusion in its revenue requirement of uncollected amounts that are still the subject of ongoing litigation. Presumably, if INS prevails in the litigations, it will reduce, in the future, its

revenue requirement to reflect the recovery of those amounts. But the beneficiaries of that reduction will not be the same group of ratepayers that initially bore the burden of the earlier inclusion of the "Uncollectible Revenues" in the revenue requirement. Worse yet, what happens if INS does not prevail? At that juncture will INS similarly reduce its rates even though it has not recovered the amounts at issue? What happens if INS cannot afford to do so?

57. The rules requiring that uncollectible revenues be "properly billed" and "a direct known cost" are designed to protect against these types of problems. Further, it is to avoid these types of problems that carriers, in my experience, do not include uncollectible revenues in their revenue requirements until **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

## III. Conclusion

58. Contrary to Mr. Schill's claims, INS has not established that its CEA rates are reasonable, nor has it addressed and resolved the serious issues identified and documented in my initial declaration. In fact, INS's answering submission not only fails to respond adequately to the matters that have been raised, it raises additional questions, particularly with respect to the lease costs that have been allocated to the Access Division. Not only has INS not produced the back-up showing how those rates are calculated, it has not made available the reasonableness testing that allegedly is prepared on periodic basis. Additionally, it has failed to identify the source data for the information set forth on Table 1 to Mr. Schill's declaration.

## CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct. Executed on July 5, 2017.

Daniel P Rhinehart

Daniel P. Rhinehart

PUBLIC VERSION

**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

**In the Matter of**

**AT&T CORP.**
**One AT&T Way**
**Bedminster, NJ 07921**
**202-457-3090**

***Complainant*,**

***v.***

**IOWA NETWORK SERVICES, INC.**
**d/b/a Aureon Network Services**
**7760 Office Plaza Drive South**
**West Des Moines, IA 50266**
**515-830-0110**

***Defendant*.**

**Proceeding Number 17-56**
**File No. EB-17-MD-001**

**AT&T CORP.'S RESPONSES TO FIRST SET OF INTERROGATORIES**

Pursuant to Section 1.729 of the Commission's rules, 47 C.F.R. § 1.729, AT&T Corp. ("AT&T") hereby submits to the Federal Communications Commission (the "Commission"), and concurrently serves on Defendant Iowa Network Services, Inc. d/b/a Aureon Network Services ("INS"), its Responses and Objections to INS's First Set of Interrogatories ("Interrogatories").

## GENERAL OBJECTIONS

In addition to any specific objections set forth below, AT&T objects generally as follows:

1. AT&T objects to the Interrogatories, and the instructions and definitions thereto, to the extent that they seek information or documents that are protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege. Any inadvertent disclosure of material protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or exemption is not intended, and should not be construed, to constitute a waiver.

2. AT&T objects generally to any interrogatory that calls for proprietary and confidential information and/or trade secrets. Notwithstanding this objection, AT&T is providing such information pursuant to the terms of the Protective Order that has been entered in this proceeding.

3. AT&T objects to the Interrogatories, and the instructions and definitions thereto, to the extent that they seek information or documents that are publicly available to, or already in the possession of, Defendant or its Counsel.

4. AT&T objects to the Interrogatories, and the instructions and definitions thereto, to the extent that they purport to impose upon AT&T any obligation not imposed by the rules of the Commission.

5. AT&T objects generally to any interrogatory to the extent it seeks information that is not both relevant to the material facts in dispute in this proceeding and necessary to the resolution of the dispute, or is otherwise inconsistent with Section 1.729 of the Commission's rules, 47 C.F.R. § 1.729.

6. AT&T objects generally to any interrogatory to the extent that it is vague, ambiguous, and/or unintelligible in the context of this matter.

7. AT&T objects to the Interrogatories, and the instructions and definitions thereto, to the extent they purport to require AT&T to provide information that is not presently within its possession, custody, or control.

8. AT&T objects to INS's definitions of the terms "you," "your," and "AT&T" to the extent those terms are intended to include any person other than AT&T Corp. The responses provided herein are provided on behalf of AT&T Corp. and not on behalf of any of its affiliates.

9. AT&T objects to the Interrogatories, and the instructions and definitions thereto, to the extent that they imply the existence of facts or circumstances that do not or did not exist,

and to the extent that they state or assume legal conclusions. In providing these responses and objections, AT&T does not admit the factual or legal premise of any of the Interrogatories.

10. AT&T objects to the Interrogatories in combination because they violate Section 1.729(a) of the Commission's rules, 47 C.F.R. § 1.729(a), by having more than ten written interrogatories, including subparts.

## OBJECTIONS TO SPECIFIC INTERROGATORIES

**INS-ATT 1:**

**Produce each and every agreement between AT&T and another service provider pursuant to which AT&T has routed traffic for that other service provider to Aureon's network between August 1, 2013 and the present. Identify each Person with which AT&T has such an agreement and provide detailed information regarding (1) the rate(s) charged by AT&T to each Person under such an agreement; (2) the amounts billed to each Person each month from September 2013 (for services provided in August 2013) to the present; (3) the amount of traffic in minutes of use ("MOU"), and if the wholesale customer is not billed on an MOU basis, the basis used (such as capacity) to bill that Person, that AT&T transported for each service provider associated with those bills; and (4) the dollar amount of the monthly payments that AT&T has made to Aureon for such traffic (separately identified by each agreement with the other service provider).**

**OBJECTION:** In addition to its general objections, AT&T objects to this multi-part Interrogatory as overbroad and unduly burdensome. In addition, it does not seek documents that are relevant to the matters properly at issue in this proceeding (or, at a minimum, in the liability phase of the proceeding). As explained in AT&T's Reply Legal Analysis and as documented in the Reply Declaration of Daniel P. Rhinehart, the overwhelming majority of the AT&T traffic that is currently transported over INS's network is traffic generated by retail services offered by AT&T and its affiliates. *See* Rhinehart Reply Decl. ¶ 50. **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

In seeking to justify this discovery request, INS makes a number of different arguments asserting that AT&T's conduct somehow justifies INS's unlawful conduct. In its reply submission AT&T address each of those arguments and demonstrates their flaws. The weakness of INS's arguments alone would justify the Commission's denying this Interrogatory. However, the Commission does not need to resolve any of those issues in considering this Interrogatory for the following reason -- each of INS's arguments is grounded in its claim that AT&T's practices with respect to its wholesale business (i.e., traffic transported for other carriers) was a principal cause of the decline in INS's CEA traffic. However, for those claims to have any validity, AT&T's wholesale traffic would have to be shown to be growing and to constitute a significant percentage of AT&T's total INS traffic. But, as explained above, that situation does not exist. In fact, the opposite situation exists. Wholesale traffic is not only not growing, it constitutes a trivial percentage of AT&T's total INS traffic and that has been the situation since early 2015. As noted in response to INS Interrogatory No. 9, Part 1, AT&T will produce traffic data confirming that wholesale traffic constitutes only a very small percentage of AT&T total INS. Accordingly, requiring AT&T to produce information in response to this request would not only be a waste of time, it would be extremely burdensome. The information sought is Highly Confidential not only to AT&T but also to AT&T's counterparties. Finally, to the extent that the requested material has any relevance, it would relate to the damages phase of this proceeding (e.g., mitigation of damages), and is thus plainly an issue for the next phase of this proceeding.

For the foregoing reasons, AT&T objects to this Interrogatory and requests that the Commission deny INS's request for this information.

**INS-ATT 2:**

**Identify (1) all offers, arrangements, agreements, proposals, correspondence, or other documents between August 1, 2013 through the present for the traffic for AT&T's retail and wholesale customers that was routed or proposed to be routed to the facilities of one or more Subtending LECs without being routed over Aureon's network, (2) the carrier or other Person that transported or would transport such traffic, (3) the type of facilities and network route over which such traffic was transported or would have been transported; and (4) to the extent that AT&T did not accept or enter into such offers, arrangements, agreements, or proposals, the reasons why AT&T did not enter into such offers, arrangements, agreements, or proposals to route such traffic to the facilities of one or more Subtending LECs without routing such traffic over Aureon's network. Produce each and every offer, agreement, draft contract, emails, letters, notes, and other documents Relating to transporting traffic of AT&T's retail and wholesale customers to the facilities of one or more Subtending LECs without routing such traffic to Aureon's network.**

**OBJECTION:** In addition to its General Objections, AT&T objects to this multi-part Interrogatory as overbroad and unduly burdensome, particularly to the extent that it seeks "offers, arrangements, agreements, proposals, correspondence, or other documents" relating to all proposals regarding the routing of traffic to the facilities of Subtending LECs without being routed over INS's network. As part of the pre-Complaint informal discovery process, AT&T searched for and produced documents relating to the subject matter addressed by this Interrogatory. Indeed, INS cites some of that material in its answering submission to support its baseless claim that INS in effect has a *de jure* monopoly over the delivery of long distance traffic in Iowa. As AT&T demonstrates in its reply submission, INS claims in this regard are baseless. But even if those claims had some merit, the fact of the matter is that AT&T does not have in place any such agreements at this time. Consequently, requiring AT&T to devote additional time and resources to looking for documents responsive to this request would not be productive.

For these reasons, AT&T objects to this Interrogatory and requests that the Commission deny INS's request that AT&T respond further to the matters addressed by this Interrogatory.

**INS-ATT 3:**

**In a November 18, 2016 email (ATT-001073), [[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]] By email on November 18, 2016 (ATT- 001072), [[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]] Identify (1) the annual minutes of use for the next five years of traffic that does not involve access stimulation, which AT&T is considering whether to route from or to the facilities of Subtending LECs without routing such traffic to Aureon's network, (2) whether such traffic is originating traffic or terminating traffic; (3) the carrier or other Person that would transport such traffic, and (4) the type of facilities and network route over which such traffic would be transported. Produce each and every signed agreement, draft contract, emails, letters, notes, and other documents Relating to AT&T's routing of traffic that does not involve access stimulation (from) or to the facilities of one or more Subtending LECs without routing such traffic to Aureon's network.**

**OBJECTION:** In addition to its General Objections, AT&T objects to this multi-part Interrogatory as overbroad and unduly burdensome. As previously noted in response to Interrogatory No. 2, AT&T does not currently have any agreements in place to route traffic from or to the facilities of Subtending LECs without routing such traffic over INS's networks. Consequently, what INS is seeking is planning documents as to possible future arrangements. Such material, to the extent it even exists, has no relevance to the issues raised by AT&T's Complaint that focus on INS's failure to abide by its tariff and the Commission's regulations. The planning steps that AT&T is taking with respect to the future routing of traffic is not relevant to the matters properly at issue and this Interrogatory has been interposed by INS in an attempt to distract attention from its unlawful conduct. Further, even if it could be shown that AT&T had put in place such arrangements – which it has not – that would not be relevant to the matters properly at issue in this case. As explained in AT&T's reply submission, INS does not have a *de jure* monopoly over the transport of long distance traffic in Iowa. *See* AT&T Reply Legal Analysis at 2. Further, the fact that INS is attempting to suggest through this and similar discovery that AT&T is to blame for the decline of traffic on its network is absurd given the significant bypass by other carriers that has already occurred, and INS's apparent failure to enforce what it contends are its rights with respect to the carriage of that traffic. Additionally, the fact that a portion of this Interrogatory focuses on non-access stimulation traffic only serves to further highlight that it is little more than an improper fishing expedition designed to distract from INS's unlawful conduct.

For these reasons, AT&T objects to this Interrogatory and requests that the Commission deny INS's request that AT&T respond further to the matters addressed by this Interrogatory.

**INS-ATT 4:**

**With regard to traffic that AT&T routed to Aureon's network that was transported to Subtending LECs assigned the following Operating Company Numbers ("OCNs"):**

| | |
|---|---|
| **739D** | **Reasnor Telephone Company, LLC** |
| **156C** | **BTC, Inc. – IA** |
| **345D** | **Great Lakes Communication Corp. – IA** |
| **3620** | **Omnitel Communications, Inc. – IA** |
| **7094** | **Goldfield Access Network, L.C.** |
| **860E** | **Interstate Cablevision – IA** |
| **904D** | **Premier Communications, Inc. – IA** |
| **4650** | **Louisa Communications, L.C.** |

**(1) Identify separately for each of these eight Subtending LECs the per minute rate and the monthly dollar amount that AT&T paid Aureon for the CEA service that routed traffic to the facilities of those Subtending LECs between August 1, 2013 through the present; and (2) produce all analysis, emails, communications, and other documents Relating to the rate and dollar amounts that AT&T paid Aureon for the CEA service that routed traffic to the facilities of those eight Subtending LECs.**

**OBJECTION:** In addition to its General Objections, AT&T objects to this Interrogatory as overbroad and unduly burdensome. The information sought by this Interrogatory regarding the traffic routed over the INS network to the identified OCNs is within INS's possession and INS thus is fully capable of generating the requested information on its own. INS clearly knows the rates at which it billed service to AT&T, it knows what AT&T has paid and not paid and it knows or should know the levels of traffic routed to each of these OCNs. Further, the basis upon which AT&T withheld payment with respect to traffic routed to these OCNs was fully discussed and explained by Mr. Habiak in his initial declaration. *See* Habiak Decl. ¶¶ 43–53. AT&T further notes that it takes issue with most of the claims articulated in INS's explanation. As AT&T discusses in detail in its reply submission, INS does not have a *de jure* monopoly over the transport of long distance traffic in Iowa. *See* AT&T Reply Legal Analysis at 2.. Further, INS's reliance on Commission decisions that are nearly 30 years old and were issued before the Telecommunications Act of 1996 and the development of access stimulation is misplaced. *See id*. Part I. Further, AT&T is under no obligation to calculate the levels of any withholding or payment under Section 61.38, as INS apparently contends. Subject to the foregoing objections, AT&T will produce, to the extent it has not already done so, the work papers supporting Mr. Habiak's calculations. In addition, it will conduct a reasonable search of its files and produce, to the extent that it has already not done so, any non-privileged analysis, emails, communications, and other documents relating to "the rate and dollar amounts that AT&T paid to" INS for the traffic routed to the identified OCNs.

**INS-ATT 5:**

**Separately Identify the reduction in Aureon's revenue requirement and interstate rate of return for CEA service between August 2013 to the present calculated in accordance with 47 C.F.R. § 61.38 that would result separately for each of the following: (1) if AT&T removed all of its traffic from Aureon's network, (2) if AT&T removed only the traffic of other carriers from Aureon's network that purchase AT&T's wholesale service, and (3) if the traffic that AT&T contends was due to access stimulation were removed from Aureon's network. Produce all analysis, emails, communications, and other documents Relating to the impact upon or change that would result to the revenue requirement, interstate rate of return, or rate for Aureon's CEA service if AT&T paid Aureon less than the tariff rate or reduced the volume of traffic that AT&T routed to Aureon's network.**

**OBJECTION:** In addition to its General Objections, AT&T objects to this multi-part Interrogatory as overbroad and unduly burdensome. INS is effectively requesting that AT&T re-compute INS's CEA rates under the three scenarios that are set forth in the Interrogatory. INS has made this request notwithstanding the fact that it is fully capable of making these types of calculations. AT&T should not be put to the burden of making these rate calculations, particularly given the fact that INS could have made these calculations and included them its answering submission but apparently elected not to do so. The fact that INS has not put these types of calculations into the record calls into question their relevance. AT&T further notes that it takes issue with most of the claims articulated in INS's explanation for the reasons identified in response to Interrogatory No. 4. Subject to the foregoing objections, AT&T will conduct a reasonable search of its files to determine whether it has any pre-existing documents reflecting or relating to such calculations. However, it should not be required to generate such calculations, particularly given that INS failed to include such calculations in the record. Further, AT&T will conduct a reasonable review of its files and produce any non-privileged documents that relate to "the impact or change that would result to the revenue requirement, interstate rate of return, or rate for [INS] CEA service if AT&T paid [INS] less than the tariff rate or reduced the volume of traffic that AT&T routed to [INS's] network."

**INS-ATT 6:**

**With regard to AT&T's contentions that Aureon's tariff rate is unreasonable, and that Aureon's tariff review plans ("TRPs"), associated cost studies, and other related materials (the "Tariff Materials") are incorrect or involve improper accounting methods or rate manipulation, (1) Identify the CEA rate that Aureon should charge for all traffic when applying 47 C.F.R. § 61.38; (2) provide all documentation and communications Related to AT&T's calculation of the Aureon CEA rate under 47 U.S.C. § 61.38 and AT&T's discussion and/or analysis of Aureon's Tariff Materials; and (3) explain the basis for AT&T's conclusions that Aureon's tariff rate is unreasonable, including, but not limited to, AT&T's conclusion that Aureon's TRPs and associated cost studies are incorrect or involve improper accounting methods or rate manipulation, and AT&T's allegation that Aureon's revenue requirement and the negative rates of return set forth in Aureon's TRP are inaccurate.**

**OBJECTION:** In addition to its General Objections, AT&T objects to this Interrogatory as overbroad and unduly burdensome. As AT&T notes at multiple points in its reply submission, INS has failed to provide key information regarding the lease costs charged to the Access Division and other aspects of its Tariff Filings to enable AT&T to re-compute a CEA rate. *See* AT&T Reply Legal Analysis, Part IV. Further, any discovery as to the appropriate level of INS's CEA rate should be deferred until the damages phase of this proceeding. Additionally, AT&T objects to INS's request that AT&T explain the basis of its concerns as to the reasonableness of INS CEA rates. The basis for AT&T's concerns are fully set forth in AT&T's Complaint (*see* Section V), its Legal Analysis (*see* Part IV), its response to INS's Answer (*see* ¶¶ 118–133), AT&T's Reply Legal Analysis (*see* Part IV), and the initial and reply declarations of Daniel P. Rhinehart. To the extent that INS has specific questions as to AT&T's presentation, AT&T is willing to respond to such inquires. AT&T should not be required to respond to this Interrogatory as currently drafted.

**INS-ATT 7:**

**Identify (1) all offers, arrangements, agreements, settlements, proposals, correspondence, emails, or other documents Regarding AT&T and any Subtending LECs where AT&T pays or proposes to pay the Subtending LEC for switched access service for traffic that is routed over Aureon's CEA network, (2) the total access minutes-of-use of traffic that AT&T routed to each Subtending LEC from August 2013 to the present for which AT&T paid a Subtending LEC under such an agreement, (3) the total dollar amount that AT&T paid to each Subtending LEC from August 2013 to the present under an agreement for that traffic, and (4) the total dollar amount of Aureon's invoices that AT&T did not pay Aureon for that traffic for which AT&T paid Subtending LECs under an agreement.**

**OBJECTION:** In addition to its General Objections, AT&T objects to this multi-part Interrogatory as overbroad and unduly burdensome. As currently written, this request would require AT&T to produce all documents relating to AT&T's dealings with respect to every Subtending LEC on INS's network. Not only would such an undertaking be burdensome, it would result in the production of large volumes of material that is of no relevance to the matters properly at issue in this proceeding. As such, the request is not a proportionate request under the newly revised Federal Rules of Civil Procedure. Further, the amounts AT&T pays to INS's Subtending LECs is of no relevance to, nor a defense to, INS's unlawful conduct. Whether INS improperly billed its CEA rates for access stimulation traffic, whether it violated the Commission's rate cap, rate parity and access stimulation rules, and whether INS unlawful manipulated its CEA rates has nothing to do with AT&T's dealings with INS's Subtending LECs. Finally, AT&T notes that INS has already had access to AT&T's production in the GLCC case and thus has sufficient information to make the arguments articulated in its Explanation.

**INS-ATT 8:**

**When Aureon revised the rate in its FCC tariff on June 17, 2013, Aureon filed its TRP and cost and usage data supporting the calculation of the CEA tariff rate in accordance with 47 C.F.R. § 61.38. AT&T did not file any petition at the FCC to suspend or other complaint at that time regarding the June 17, 2013 FCC tariff revision. Identify the reasons why AT&T did not file a petition or complaint regarding the June 17, 2013 FCC tariff revisions in 2013, 2014, 2015, or 2016. Produce all analysis, emails, communications, and other documents Relating to AT&T's decision not to file a petition or complaint regarding Aureon's June 17, 2013 FCC tariff revision.**

**OBJECTION:** In addition to its General Objections, AT&T objects to this Interrogatory because it does not seek relevant information. The reasons AT&T decided not to file a petition challenging INS's 2013 Tariff Filing, and instead elected to file a Counterclaim in response to INS's filing of a collection action in New Jersey federal court and to pursue its claims in the court and later before the FCC, are not only likely privileged but they have no bearing on the matters at issue in this proceeding. As AT&T explained in its initial submission, its claims are not barred by the "deemed lawful" doctrine. *See* AT&T Legal Analysis, Part II. Further, INS's affirmative defenses regarding estoppel and the like are wholly lacking in merit. Subject to the foregoing objections, AT&T will conduct a reasonable search of its files and produce, to the extent that it has not already, any non-privileged documents that relate to AT&T's decision not to challenge INS's 2013 Tariff Filing.

**INS-ATT 9:**

**Provide: (1) a breakdown of the traffic that AT&T routed to Aureon's network in minutes of use per month between August 1, 2013 through the present by customer categories (i.e., wireless residential, wireless business, wireline residential, wireline business, calling card, etc.); (2) the rate plan(s) applicable to each customer category; (3) the number of minutes applicable to each rate plan; and (4) the incremental revenue that AT&T received for each rate plan, and for each customer category on calls routed to Aureon's network. Include revenues that AT&T received from customers who exceeded their allotted minutes on fixed rate wireless and wireline plans. For purposes of this Interrogatory, the term "incremental revenue" means the revenue that AT&T received for each minute for calls to Aureon's network.**

**OBJECTION:** In addition to its General Objections, AT&T objects to this multi-part Interrogatory as overbroad and unduly burdensome. As noted in response to Interrogatory No. 1, AT&T will produce documents responsive to Part (1) of this Interrogatory providing a breakdown of the traffic routed over INS's networks presented by customer categories for the last three years (i.e., since June 2014). Such data is currently available on AT&T's systems. AT&T will also investigate whether such data for the period August 2013 to May 2014 can be recovered without undue burden. As to the remainder of the requests set forth in this Interrogatory, AT&T objects on the ground that the material and information sought are not relevant to the matters properly at issue, particularly at this stage of this proceeding. *See* AT&T's discussion of the relevance of such material in its responses to Interrogatories Nos 1 and 2, which are incorporated herein by reference. AT&T further notes that this type of discovery is more properly considered in the damages phase of this proceeding.

**INS-ATT 10:**

**Some of the documents that AT&T produced during the pre-complaint informal exchange of documents were redacted and marked "privileged." Provide a privilege log for both the documents produced during the pre-complaint informal exchange of documents and for any documents responsive to these formal discovery requests. In the privilege log, Identify with respect to each document or other information you claim is privileged: (1) a general description of the information that you claim is privileged; (2) the identities, titles, and roles of the authors; (3) the identities, titles, and roles of each recipient; (4) the identities, titles, and roles of each person that was CC'ed or received a copy of the information; (5) the privilege or privileges asserted; (6) a detailed explanation of why the particular information is claimed to be privileged; and (7) any other circumstances affecting the existence, extent, or waiver of the privilege.**

**OBJECTION:** In addition to its General Objections, AT&T objects to this multi-part Interrogatory as overbroad and unduly burdensome. Given that this proceeding is to be resolved within five months of the filing of the Complaint, it is not clear that the preparation of detailed privilege logs and the litigation of privilege claims is feasible or practical. Further, a review of the material that has been withheld to date suggest that the withheld material is of tangential relevance to the matters properly at issue in this proceeding. AT&T further objects to the instructions set forth in this Interrogatory to the extent that they are at odds with the requirements set forth in the Federal Rules of Civil Procedure and the Commission's rules. AT&T also notes that any requirements regarding the logging of privileged documents must be done on a uniform, mutual basis. In other words, if requirements are put on one party, they will apply to the other party. Finally, AT&T states that it is prepared to discuss with INS and Commission Staff alternative approaches that will ensure that all relevant non-privileged material is produced but at the same time reduce to the maximum extent possible the significant burdens associated with the review of privileged material.

Respectfully submitted,

/s/ Michael J. Hunseder

Michael J. Hunseder

Letty Friesen
AT&T SERVICES, INC
161 Inverness Drive West
Englewood, CO 80112
(303) 299-5708
(281) 664-9858 (fax)

James F. Bendernagel, Jr.
Michael J. Hunseder
Spencer Driscoll
Morgan Lindsay
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
jbendernagel@sidley.com
mhunseder@sidley.com
(202) 736-8000
(202) 736-8711 (fax)

Brian A. McAleenan
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
(312) 853-7000
(312) 853-7036 (fax)

Dated: July 5, 2017

*Counsel for AT&T Corp.*

**PUBLIC VERSION**

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | |
|---|---|
| **In the Matter of**<br><br>**AT&T CORP.**<br>**One AT&T Way**<br>**Bedminster, NJ 07921**<br>**(303) 299-5708**<br><br>***Complainant,***<br><br>***v.***<br><br>**IOWA NETWORK SERVICES, INC.**<br>**d/b/a Aureon Network Services**<br>**7760 Office Plaza Drive South**<br>**West Des Moines, IA 50266**<br>**(515) 830-0110**<br><br>***Defendant.*** | **Proceeding Number 17-56**<br>**File No. EB-17-MD-001** |

**AT&T CORP.'S SECOND REQUEST FOR INTERROGATORIES**
**TO IOWA NETWORK SERVICES, INC.**

Pursuant to 47 C.F.R. § 1.729(a), Complainant AT&T Corp. ("AT&T") hereby submits to the Federal Communications Commission, and concurrently serves on Defendant Iowa Network Services, Inc. d/b/a Aureon Network Services ("INS"), this Second Request for Interrogatories ("Interrogatories"). INS shall respond to these Interrogatories in the time provided by 47 C.F.R. § 1.729, in writing, under oath, and in accordance with the Commission's rules and the Instructions and Definitions set forth herein.

## DEFINITIONS

1. All terms used herein shall be construed in an ordinary, common sense manner, and not in a hyper-technical, strained, overly-literal, or otherwise restrictive manner; however, acronyms and other terms of art in the telecommunications industry shall have the meaning typically ascribed to them by the industry.

2. "Any" means each, every, and all persons, places, or things to which the term refers.

3. "Communication" means any transfer of information, whether written, printed, electronic, oral, pictorial, or otherwise transmitted by any means or manner whatsoever.

4. "Concerning" means relating to, involving, reflecting, identifying, stating, referring to, evidencing, constituting, analyzing, underlying, commenting upon, mentioning, or connected with, in any way, the subject matter of the request.

5. "Copy" means any reproduction, in whole or in part, of an original document and includes, but is not limited to, non-identical copies made from copies.

6. "Describe" and "description" means to set forth fully, in detail, and unambiguously each and every fact of which you have knowledge related to answering the interrogatory.

7. "Document" means any written, drawn, recorded, transcribed, filed, or graphic matter, including scientific or researchers' notebooks, raw data, calculations, information stored in computers, computer programs, surveys, tests and their results, however produced or reproduced. With respect to any document that is not exactly identical to another document for any reason, including but not limited to marginal notations, deletions, or redrafts, or rewrites, separate documents should be provided.

8. “Free Calling Party” means a provider of high call volume operations such as chat lines, adult entertainment calls, and “free” conference calls that obtains at least some revenue from one or more local exchange carriers under an arrangement to share access revenues collected on long distance calls made to such provider.

9. “Identify,” “identity,” or “identification,” when used in relation to “person” or “persons,” means to state the full name and present or last known address of such person or persons and, if a natural person, his or her present or last known job title, the name and address of his or her present or last known employer, and the nature of the relationship or association of such person to you.

10. “Identify,” “identity,” or “identification,” when used in relation to “document” or “documents,” means to state the date, subject matter, name(s) of person(s) that wrote, signed, initialed, dictated, or otherwise participated in the creation of the same, the name(s) of the addressee(s) (if any), and the name(s) and address(es) (if any) of each person or persons who have possession, custody, or control of said document or documents.

11. “Identify” when used in relation to a “communication” means to identify the participants in each communication and, if such communication is not contained in a document, the date, place, and content of such communication.

12. “Including” means including but not limited to.

13. “Interexchange carrier” or “IXC” means a long-distance carrier who provides intrastate or interstate long-distance communications services between local exchange areas. It also includes a wireless carrier, when the wireless carrier is routing intrastate or interstate long-distance communications services for termination to a local exchange carrier.

14. “Original” means the first archetypal document produced, that is, the document itself, not a copy.

15. “Person” or “persons” means any natural person or persons, group of natural persons acting as individuals, group of natural persons acting as a group (*e.g.*, as a board of directors, a committee, *etc*.), or any firm, corporate entity, partnership, association, joint venture, business, enterprise, cooperative, municipality, commission, or governmental body or agency.

16. “Relevant Period” means December 29, 2011, to the present, unless otherwise specified.

17. “Tariff Filings” means the annual access charge tariff filings that INS made with the Commission via transmittal letters dated June 16, 2010, June 26, 2012, June 17, 2013, June 14, 2014 and June 16, 2016.

18. “Termination Services” means any service provided by any entity to deliver, in any form including but not limited to either a TDM or IP connection, a long-distance telephone call from an interexchange carrier to a local exchange carrier for termination to any of a Free Calling Party. Such services also include but are not limited to any direct connection service similar to the “Direct-Trunked Transport” service provided by CenturyLink pursuant to CenturyLink FCC Tariff No. 11.

19. “Underlying litigation” means any and all proceedings in *INS v. AT&T*, No. 14-cv-03439 (D.N.J. filed May 30, 2014).

20. “You,” “your,” or “INS” means Iowa Network Services, Inc. d/b/a Aureon Network Services; any of its parent, affiliated, or subsidiary companies; and employees, officers, directors, agents, representatives, and all other persons or entities acting or purporting to act on

their behalf, including without limitation any outside consultant or witness retained by them. In that regard, each and every interrogatory contained herein is directed at you.

## INSTRUCTIONS

When responding to the following interrogatories, please comply with the instructions below:

1. Each interrogatory is continuing in nature and requires supplemental responses as soon as new, different, or further information is obtained that is related to answering the interrogatory.

2. Provide all information, including all documents, related to answering the interrogatory that are in your possession, custody, or control, regardless of whether such documents are possessed directly by you or by your employees, officers, directors, agents, representatives, or any other person or entity acting or purporting to act on their behalf.

3. In lieu of producing any requested information or documents that were previously provided to AT&T in the underlying litigation, or as part of the informal discovery process in this proceeding, identify when and how such information or documents were previously provided to AT&T.

4. In any interrogatory, the present tense shall be read to include the past tense, and the past tense shall be read to include the present tense.

5. In any interrogatory, the singular shall be read to include the plural, and the plural shall be read to include the singular.

6. In any interrogatory, the use of the conjunctive shall be read to include the disjunctive, and the use of the disjunctive shall be read to include the conjunctive.

7. Any document withheld from production on the grounds of a privilege is to be specifically identified by author(s), addressee(s), length, and date, with a brief description of the subject matter or nature of the document, and a statement of the privilege asserted.

8. If you contend that any part of your response to a particular Interrogatory contains trade secrets or other proprietary or confidential business or personal information, such contention shall not provide a basis for refusing to respond within the time required by the applicable rules. You shall respond according to and consistent with the terms of the Protective Order entered by the Commission on February 24, 2017.

9. Please begin the response to each request on a separate page.

10. Please restate each interrogatory before providing the response or objection.

11. Please specify the interrogatory in response to which any document, narrative response, or objection is provided. If a document, narrative response, or objection relates to more than one request, please cross reference.

12. For each separate interrogatory, identify the person(s) under whose supervision the response was prepared.

13. For any interrogatory consisting of separate subparts or portions, a complete response is required to each subpart as if the subpart or portion were propounded separately.

14. Produce any documents in the form of legible, complete, and true copies of the original documents as "original" is defined herein. To the extent that excel spreadsheets are produced, they should be provided in native format.

15. Please provide all documents in their native format, together with all metadata.

16. If you assert that documents or information related to answering an interrogatory are unavailable or have been discarded or destroyed, state when and explain in detail why any

such document or information was unavailable, discarded, or destroyed, and identify the person directing the discarding or destruction. If a claim is made that the discarding or destruction occurred pursuant to a discarding or destruction program, identify and produce the criteria, policy, or procedures under which such program was undertaken.

17. If any interrogatory cannot be answered in full after reasonable inquiry, provide the response to the extent available, state why the interrogatory cannot be answered in full, and provide any information within your knowledge concerning the description, existence, availability, and custody of any unanswered portions.

# <u>INTERROGATORIES</u>

<u>**ATT-INS 11**</u>: **In its Legal Analysis, INS asserts that that "AT&T's actions have resulted in significant increased costs to smaller competing interexchange carriers ("IXCs"), and threatens the entire competitive long distance market for rural Iowa." See INS Legal Analysis at 2. Please identify the names of each of the "smaller competing interexchange carriers" referenced in this sentence and produce all documents quantifying or otherwise discussing the "significant increased costs" that allegedly have resulted from AT&T's conduct. In addition, in light of the Commission's determination that stand-alone long-distance has long been a fringe market, *see, e.g., In re USTelecom Petition for Forbearance*, 31 F.C.C. Rcd. 6157, ¶ 49 (2015), please explain in detail how AT&T's conduct "threatens the entire competitive long distance market for rural Iowa" and produce all documents either supporting or discussing that issue, including whether there exists a separate product market for long distance service in rural Iowa and, if so, please produce any market analysis of long distance competition in rural Iowa. Further, for the period September 2013 to May 2017, please provide by month the total minutes of use that INS transported for Verizon, CenturyLink, Sprint, Frontier and any other IXC that You do not consider to be a "smaller competing interexchange carrier."**

<u>**Explanation**</u>**:** The information sought in this interrogatory is directly relevant to AT&T's claim that INS's provision of CEA service in connection with access stimulation traffic is unlawful, and that the "mandatory use" requirement once associated with CEA traffic does not apply to CLECs or to access stimulation traffic. *See* Complaint, Section II; AT&T Legal Analysis, Part I. The information in this interrogatory is also needed to enable AT&T to understand the basis for

the aforementioned statements in INS's Legal Analysis, for which INS does not provide any citation, data, or other supporting information. *See* INS Legal Analysis at 2. This information is not available to AT&T through any source other than INS. Indeed, the interrogatory relates to information that INS would alone have access to, given its position as the sole proprietor of CEA service in Iowa with relevant information on these "smaller competing [IXCs]."

<u>ATT-INS 12</u>**: With respect to Table 1 to Mr. Schill's declaration, please identify the source of the data set forth in each column on Table 1 and either identify where in INS's production that information can be located (i.e., the applicable bates ranges) or produce copies of the documents setting forth this information.**

**<u>Explanation</u>:** The information sought in this interrogatory is directly relevant to AT&T's claim that INS has improperly manipulated its rates, including by manipulating its lease cost calculations and by mis-allocating costs for its network facilities. *See* AT&T Complaint, Section V; AT&T Legal Analysis, Part IV. The information in this interrogatory is also needed to enable AT&T to understand the basis for the data provided in Table 1 of Mr. Schill's declaration, which table does not contain any explanations for the cost summaries, nor does it cite to the relevant source data. This information is not available to AT&T through any source other than INS, as INS prepared the table, and INS alone possesses the back-up data from which the calculations in the table were derived.

**ATT-INS 13: On page 12 of Mr. Schill's declaration he states: "Network lease costs are periodically tested for reasonableness based on an analysis of costs derived from the IXC Division." Please describe that testing, and produce all documents reflecting or otherwise discussing the results of that testing.**

**Explanation**: The information sought in this interrogatory is directly relevant to AT&T's claim that INS has improperly manipulated its rates, particularly the claim that INS improperly handled its network investment costs. *See* AT&T Complaint, Section V; AT&T Legal Analysis, Part IV. The information in this interrogatory is also needed to enable AT&T to assess the basis for, and methodology behind, INS's purported tests for reasonableness, as INS has yet to disclose any information surrounding such tests. This information is not available to AT&T through any source other than INS.

**<u>ATT-INS-14</u>: In response to AT&T's Interrogatory Nos. 3 and 10, You indicate that INS "does not know the identity of all LECs to which call aggregation traffic was directed over the CEA network during the period 2012" and You then indicate that you will produce the requested documents for the seven access stimulating CLECs identified by AT&T in its November 8, 2016 informal discovery requests. Please confirm that these seven CLECs are the only CLECs that, to your knowledge, are involved in access stimulation. In addition, please confirm that these seven CLECs are the only LECs to which traffic designated as call aggregation traffic on the INS worksheets identified in AT&T Interrogatory No. 1 (i.e. Aureon_01934-38, 02180-85, 02394-98 and 02696-708) was routed. To the extent that is not the case, please identify the names of the additional LECs to which call aggregation traffic was directed and produce the documents referenced in Interrogatories Nos. 3 and 10 for those additional LECs.**

**<u>Explanation</u>:** The information sought in this interrogatory is directly relevant to AT&T's claim regarding INS's role in the growth of access stimulation in Iowa (*see* AT&T Complaint, Section I.D) and AT&T's claim that INS is subject to the Commission's rules regarding the rates that can be charged with respect to access stimulation traffic, particularly the issue of whether INS has entered into "revenue sharing agreements" with entities involved in access stimulation. *See* AT&T Complaint, Section V; AT&T Legal Analysis & Reply Legal Analysis, Part III. The information sought in this interrogatory is also relevant to AT&T's claim that more efficient alternatives exist for delivering access stimulation traffic to the end office switches of CLECs engaged in access stimulation. *See* AT&T Complaint, Section II.B. In addition, this information is relevant to AT&T's claims regarding rate manipulation, particularly its claims regarding INS's calculation and allocation of network costs and the issue of whether INS's CEA service is cross subsidizing the service offerings of other INS's divisions. *See* AT&T Complaint, Section V; AT&T Legal Analysis & Reply Legal Analysis, Parts IV.B and C. Finally, this information is relevant to the issue of by-pass, and whether INS is facilitating and/or benefiting from LECs having taken steps to by-pass the INS network. *See* AT&T Complaint, Section II.B; AT&T Legal Analysis, Parts I.B and I.C.4.

This information is not available to AT&T through any source other than INS. Indeed, this information constitutes the only way to understand and evaluate whether INS's CEA service is cross subsidizing other INS service offerings.

**<u>ATT- INS-15</u>: In response to AT&T Interrogatory No. 6, You identify the INS divisions that are included in the "All Other" category as "the Parent, the Network and the Products Division." Further, in response to AT&T Interrogatory No. 7, You state that Account 6410 "includes the lease costs that Aureon's Network Division charges to the Access Division." In Your answering submission, however, INS's IXC Division is identified as leasing capacity to the Access Division. Please clarify which INS division leases capacity to the Access Division. To the extent that the Network Division is the same as the IXC Division, does the Network/IXC Division lease transport capacity to third parties? If so, please identify those services and state whether the rates for any of those services are based on fully distributed costs as that term is used by Mr. Schill in his declaration. *See* Schill Decl. ¶¶ 5, 20. If so, please identify each such service.**

**<u>Explanation</u>**: The information sought by this interrogatory is directly relevant to AT&T's claims that INS has engaged in rate manipulation, particularly its claims regarding INS's calculation, allocation of network costs, and that the lease costs allocated to INS's Access Division are not just and reasonable. *See* AT&T Complaint, Section V; AT&T Legal Analysis & Reply Legal Analysis, Parts IV.B and C. This information is not available to AT&T through any source other than INS. Indeed, this information constitutes the only way to understand and evaluate the reasonableness of INS's rates.

Respectfully submitted,

Michael J. Hunseder

Letty Friesen
AT&T SERVICES, INC
161 Inverness Drive West
Englewood, CO 80112
(303) 299-5708
(281) 664-9858 (fax)

James F. Bendernagel, Jr.
Michael J. Hunseder
Spencer Driscoll
Morgan Lindsay
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
jbendernagel@sidley.com
mhunseder@sidley.com
(202) 736-8000
(202) 736-8711 (fax)

Brian A. McAleenan
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
(312) 853-7000
(312) 853-7036 (fax)

*Counsel for AT&T Corp.*

Dated: July 5, 2017

**Table of Exhibits in Support of
AT&T's Reply to the Answer**

| Ex. | Description |
|---|---|
| 83 | CenturyLink Communications, LLC, Tariff FCC No. 11, Section 6.1 |
| 84 | AT&T Opposition to INS Motion for Summary Judgment, *Iowa Network Servs., Inc. v. AT&T Corp.*, No. 14-3439 (D.N.J. June 1, 2015) |
| 85 | AT&T INS Wholesale Traffic – 2014 to 2017 |

# Exhibit 83

## Century Link Communications, LLC, Tariff FCC No. 11, Section 6.1

# 6. SWITCHED ACCESS SERVICE

## 6.1 GENERAL

Switched Access Service, which is available to customers for their use in furnishing their services to end users, provides a two-point electrical communications path between a customer's premises and an end user's premises. It provides for the use of terminating, switching, transport facilities and common subscriber plant of the Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer's premises, and to terminate calls from a customer's premises to an end user's premises in the LATA where it is provided. Specific references to material describing the elements of Switched Access Service are provided in 6.1.1, following.

Rates and charges for Switched Access Service not subject to Phase II Pricing Flexibility are set forth in 6.8, following. Phase II Pricing Flexibility rates are specified in Section 16. The wire centers included in Phases I and II Pricing Flexibility are identified in Section 23.

The application of rates for Switched Access Service is described in 6.7, following. Rates and charges for services other than Switched Access Service, e.g., a customer's interLATA toll message service, may also be applicable when Switched Access Service is used in conjunction with these other services. Descriptions of such applicability are provided in 6.2.1.A.8., 6.2.1.B.5., 6.2.2.A.7., 6.2.2.B.4., 6.2.3.A.7., 6.2.4.A.5., 6.2.5.A.8., 6.2.5.B.4., 6.2.6.A.1.g., 6.2.6.A.2.d., 6.2.6.B.1.g., 6.2.6.C.1.e., 6.7.8 and 6.7.10, following. Finally, a credit is applied against Lineside Switched Access Service charges as described in 6.7.9, following.

# 6. SWITCHED ACCESS SERVICE

## 6.1 GENERAL (Cont'd)

### 6.1.1 SWITCHED ACCESS SERVICE ARRANGEMENTS AND MANNER OF PROVISION

Switched Access Service is provided by the following Lineside Access or Trunkside Access Basic Serving Arrangements (BSAs) and Feature Groups.

**LINESIDE ACCESS**

| BUNDLED | UNBUNDLED |
|---|---|
| Feature Group A | Circuit Switched Lineside |

**TRUNKSIDE ACCESS**

| BUNDLED | UNBUNDLED |
|---|---|
| Feature Group B | Circuit Switched Trunkside |
| Feature Group C | Option 1 |
| Feature Group D | Option 2 |
| | Option 3 |

The names of the BSAs are identified in Bell Operating Companies ONA Special Report #5, Issue 2.1 updated July 31, 1991, as Circuit Switched Lineside BSA and Circuit Switched Trunkside BSA.

Circuit Switched Lineside (CSL) and Circuit Switched Trunkside (CST) are provided as unbundled service arrangements and are available with various Basic Service Elements (BSEs) and optional features. CST Access is available in three different serving arrangements, CST-Option 1 (CST1), CST-Option 2 (CST2) and CST-Option 3 (CST3)[1]. CSL and CST BSAs and options are provided as set forth in 6.2.5 and 6.2.6, following.

[1] CST1, CST2 and CST3 are the unbundled service arrangements that are similar to FGs B, C and D.

## 6.1 GENERAL

### 6.1.1 SWITCHED ACCESS SERVICE ARRANGEMENTS AND MANNER OF PROVISION (Cont'd)

Feature Groups are available with various BSEs and optional features. The Feature Groups are provided as set forth in 6.2.1, 6.2.2, 6.2.3 and 6.2.4, following.

No customer can have Feature Group arrangements and unbundled BSAs at the same time in the same LATA.

Nonrecurring charges will be applied as set forth in 6.7.1., following.

*DID* Switched Access Service is available on a bundled or unbundled basis and is described in 6.2.7, following. 800 DB Access Service, 900 Access Service, Dedicated Network Access Links (DNALs), Switched Data Services and 500 Access Service are available and are described in 6.2.8, 6.2.9, 6.2.10, 6.2.11 and 6.2.12, following.

The BSAs and Feature Groups are differentiated by their technical characteristics, e.g., lineside vs. trunkside connection at the Company entry switch, and the manner in which an end user accesses them in originating calling, e.g., with or without an access code.

Lineside Access (CSL and FGA) is furnished on a per-line basis. Trunkside Access (CST and FGs B, C and D) and *DID* Switched Access is furnished on a per-trunk basis.

Trunks are differentiated by type and directionality of traffic carried over a Switched Access Service arrangement. Differentiation among traffic types is necessary for the Company to design Switched Access Service properly to meet the traffic carrying capacity requirement of the customer.

# 6. SWITCHED ACCESS SERVICE

## 6.1 GENERAL

### 6.1.1 SWITCHED ACCESS SERVICE ARRANGEMENTS AND MANNER OF PROVISION (Cont'd)

There are seven major traffic types. These are Originating, Terminating, Voice Directory Assistance (Voice DA), *SWITCHNET 56*, CCC Originating, CCC Terminating and Operator Assistance Service.

- Originating traffic type represents access capacity within a LATA for carrying traffic from the end user to the customer.

- Terminating traffic type represents access capacity within a LATA for carrying traffic from the customer to the end user.

- Voice DA traffic type represents access capacity for carrying Regional Directory Assistance (RDA) or National Directory Assistance (NDA) traffic from the customer to a Voice DA location.

- *SWITCHNET 56* traffic type represents access capacity within a LATA for carrying digital traffic at speeds up to 56 kbps between the customer and the end user.

- CCC Originating traffic type represents access capacity within a LATA for carrying circuit switched data and/or circuit switched voice traffic on CST3 or FGD Service equipped with clear channel capability from the end user to the customer.

- CCC Terminating represents access capacity within a LATA for carrying circuit switched data and/or circuit switched voice traffic on CST3 or FGD Service equipped with Clear Channel Capability from the customer to the end user.

- Operator Assistance Service traffic type represents access capacity within a LATA for carrying operator assistance traffic to or from the customer's premises, to or from a Company-designated OAS tandem location.

# 6. SWITCHED ACCESS SERVICE

## 6.1 GENERAL

### 6.1.1 SWITCHED ACCESS SERVICE ARRANGEMENTS AND MANNER OF PROVISION (Cont'd)

When ordering capacity for Trunkside Switched Access, the customer must, at a minimum, specify such access capacity in terms of the following:

- Originating and/or Terminating traffic type,
- *SWITCHNET 56* traffic type,
- CCC Originating traffic type and/or CCC Terminating traffic type,
- Voice DA traffic type is used for ordering Voice DA Access Service as set forth in Section 9, following, and
- Operator Assistance Service traffic type.
- Additionally, when ordering capacity for 500 Access Service, 800 DB Access Service and/or 900 Access Service, the customer must specify 5YY, 8XX and/or 900 traffic type.

Because some customers will wish to segregate their originating CST2, CST3, FGC, FGD, 500 Access Service, 800 DB Access Service, or 900 Access Service traffic further into separate trunk groups, the Originating traffic type and CCC Originating traffic type are further categorized into Domestic, 5YY, 8XX, 900, Operator and IDDD as described following:

- Domestic traffic type represents access capacity for carrying only domestic traffic other than 5YY, 8XX, 900 and Operator traffic.
- IDDD traffic type represents access capacity for carrying only international traffic.
- 5YY, 8XX, 900 and Operator traffic type represents access capacity for carrying, respectively, only 5YY, 8XX, 900 or Operator traffic.

When such a customer wishes to segregate traffic as described above, the customer must specify Domestic, 5YY, 8XX, 900, Operator or IDDD traffic type.

## 6. SWITCHED ACCESS SERVICE

### 6.1 GENERAL

### 6.1.1 SWITCHED ACCESS SERVICE ARRANGEMENTS AND MANNER OF PROVISION (Cont'd)

When Switched Access Service connects to Expanded Interconnection-Collocation (EIC) Service as set forth in Section 21, following, the Switched Access Service is provided at a DS1 or DS3 capacity connecting to an EIC Channel Termination DS1 or DS3. A Switched Transport Entrance Facility is not required. The designated serving wire center for Switched Access Services connecting to EIC Service is determined as follows:

- The wire center where the Telephone Company-designated point of interconnection exists for Virtual EIC will be the designated Switched Transport serving wire center and the customer point of interconnection for Switched Access Services.

## 6.1 GENERAL (Cont'd)

### 6.1.2 RATE CATEGORIES

There are three rate categories which apply to Switched Access Service (see exception below for DNAL):

- Switched Transport (described in 6.1.2.A., following)
- Local Switching (described in 6.1.2.B., following)
- Common Line (described in Sections 3 and 4, preceding)

The DNAL (described in 6.2.10, following) is a Switched Transport flat-rated service and is not subject to the Local Switching or Common Line rate categories above.

In addition to the three rate categories, there are rate elements applicable to certain Switched Access services:

- 500 Access Service Charges, applicable to 500 Access Service provided in conjunction with CST1, CST2, CST3, Feature Group B, C or D. The description and application of these charges are set forth in 6.7.1, following.

- 800 DB Access Service Charges, applicable to 800 DB Access Service provided in conjunction with Trunkside Access. The description and application of these charges are set forth in 6.7.1, following.

- 900 Access Service Charges, applicable to 900 Access Service provided in conjunction with CST2, CST3, Feature Groups C, D and 900 Access Service (FGB-like). The description and application of these charges are set forth in 6.7.1, following.

- Dedicated Network Access Link Charges, applicable to DNAL service, provided in conjunction with CSL or FGA access service provided with the Make Busy Arrangement, Message Delivery Service or Customer Identification-Bulk BSEs. The description and application of these charges are set forth in 6.7.1, following.

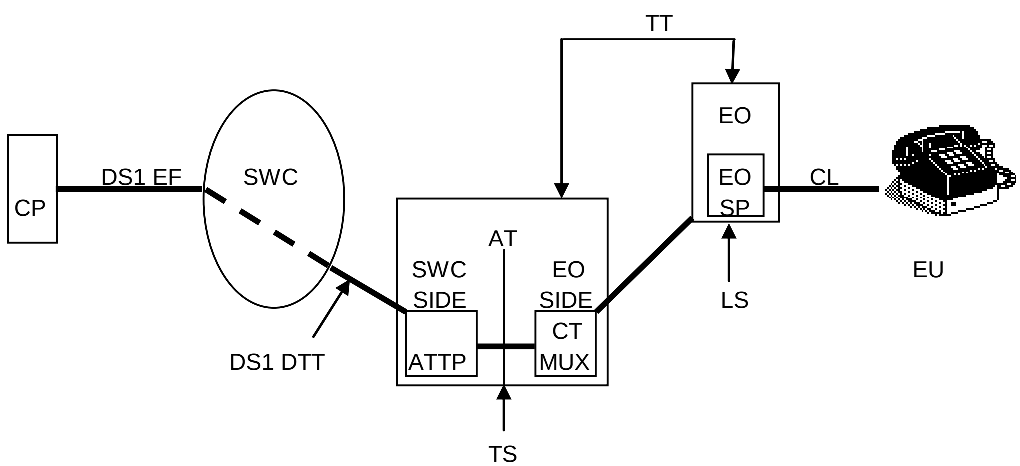
- Information Surcharge, applicable to all Interstate Switched Access Service minutes of use. The description and application of this rate element is set forth in 6.7.1.N., following.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES (Cont'd)**

The following diagrams depict possible serving arrangements and components of Switched Access Service and the manner in which the components are combined to provide a complete access service. The following diagrams are not intended to depict all serving arrangements available. Common line rate elements are described in Section 3 and Section 4, preceding.

**EXAMPLE 1**

**Switched Access Service Ordered with Tandem Routing**




AT - Access Tandem
ATTP - Access Tandem Trunk Port
CL - Common Line
CP - Customer's Premises
CT MUX - Common Transport Multiplexing
DTT - Direct Trunked Transport
EF - Entrance Facility
EO - End Office
EO SP - End Office Shared Port
EU - End User
LS - Local Switching
SWC - Serving Wire Center
TS - Tandem Switching
TT - Tandem Transmission

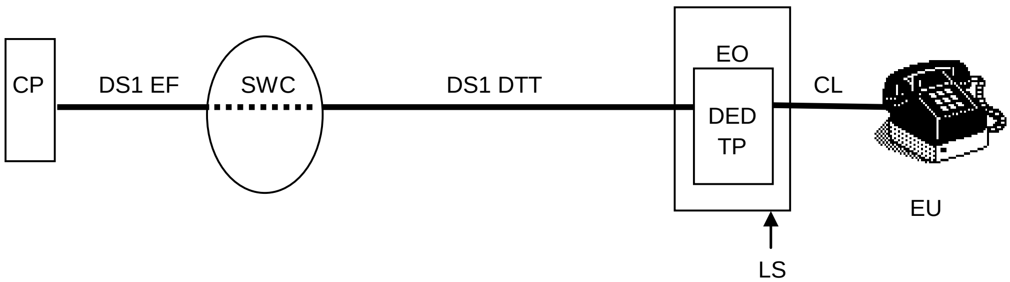
# ACCESS SERVICE

## 6. SWITCHED ACCESS SERVICE

### 6.1 GENERAL
### 6.1.2 RATE CATEGORIES (Cont'd)

**EXAMPLE 2**

**Switched Access Service Ordered with DS1 EF and DS1 DTT Facility**



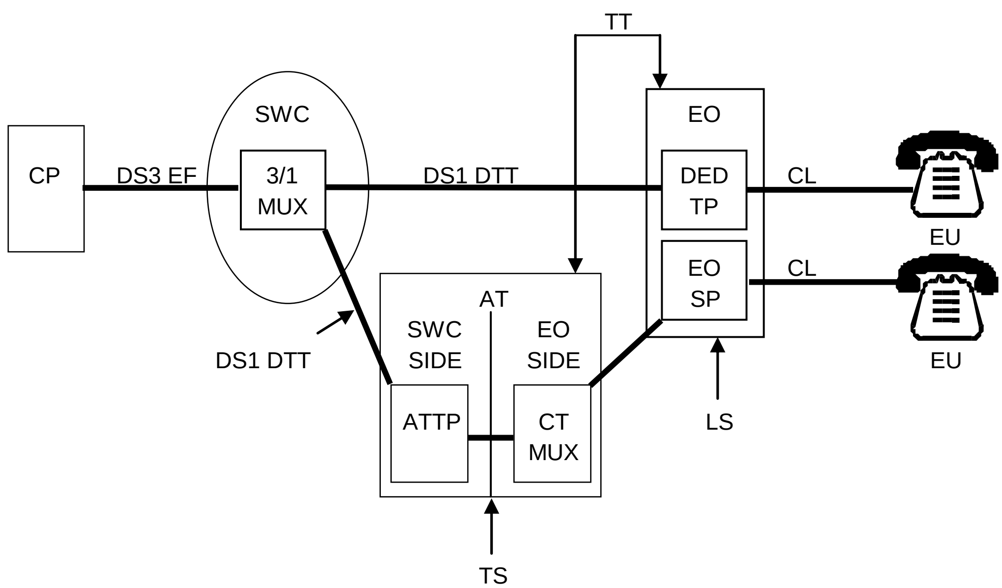

| | | |
|---|---|---|
| CL | - | Common Line |
| CP | - | Customer's Premises |
| DED TP | - | Dedicated Trunk Port |
| DTT | - | Direct Trunked Transport |
| EF | - | Entrance Facility |
| EO | - | End Office |
| EU | - | End Users |
| LS | - | Local Switching |
| SWC | - | Serving Wire Center |

## 6. SWITCHED ACCESS SERVICE

### 6.1 GENERAL
### 6.1.2 RATE CATEGORIES (Cont'd)

**EXAMPLE 3**

**Switched Access Service Ordered**
**with DS3 EF for DTT and TST**




| | | |
|---|---|---|
| AT | - | Access Tandem |
| ATTP | - | Access Tandem Trunk Port |
| CL | - | Common Line |
| CP | - | Customer's Premises |
| CT MUX | - | Common Transport Multiplexing |
| DED TP | - | Dedicated Trunk Port |
| DTT | - | Direct Trunked Transport |
| EF | - | Entrance Facility |
| EO | - | End Office |
| EO SP | - | End Office Shared Port |
| EU | - | End User |
| LS | - | Local Switching |
| MUX | - | EF Multiplexer |
| SWC | - | Serving Wire Center |
| TS | - | Tandem Switching |
| TT | - | Tandem Transmission |

**6. SWITCHED ACCESS SERVICE**

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES (Cont'd)**

**EXAMPLE 4**

**Reserved for Future Use**

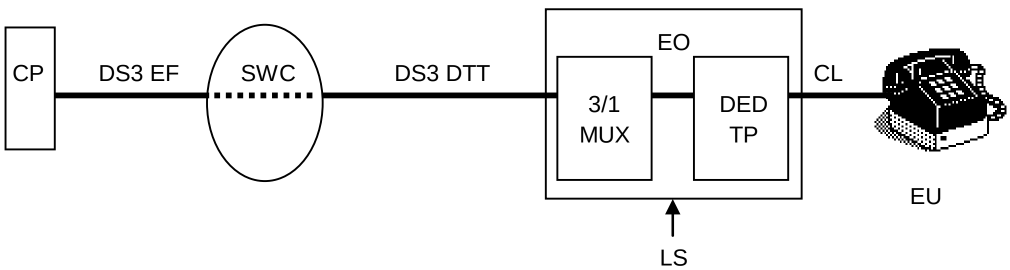
# ACCESS SERVICE

## 6. SWITCHED ACCESS SERVICE

### 6.1 GENERAL
### 6.1.2 RATE CATEGORIES (Cont'd)

EXAMPLE 5

**Switched Access Service Ordered with DS3 EF and DS3 TT Facility to an End Office**



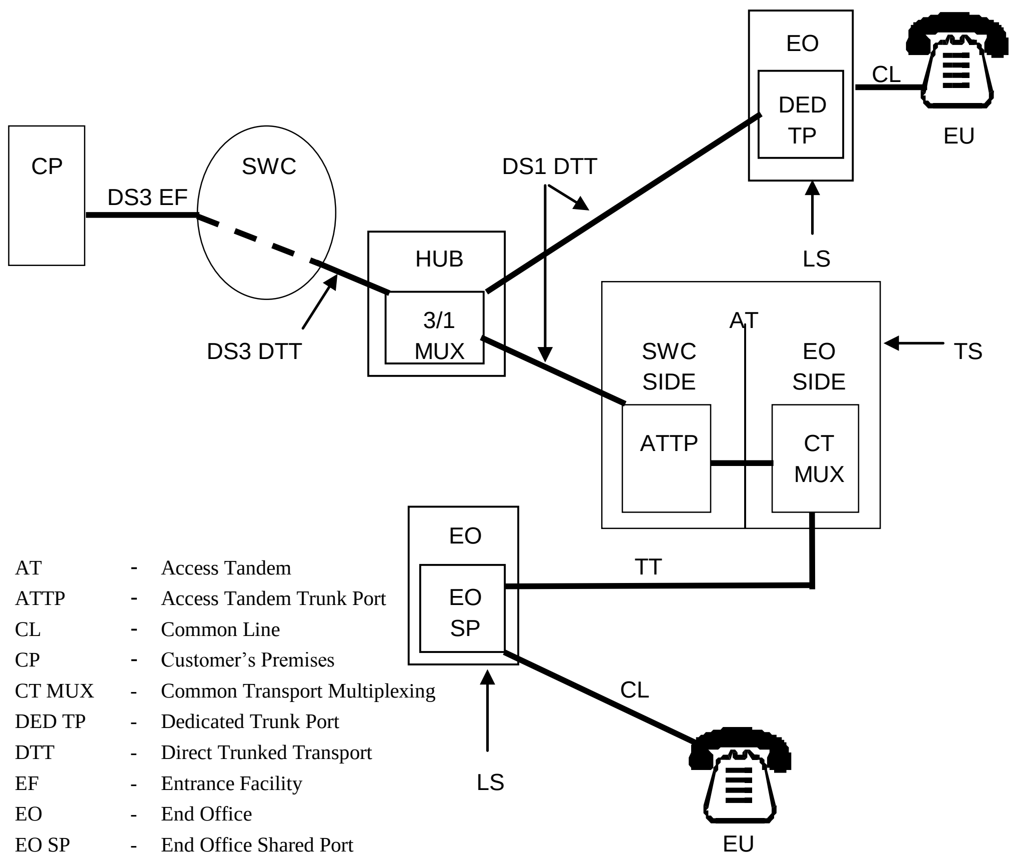

| | | |
|---|---|---|
| CL | - | Common Line |
| CP | - | Customer's Premises |
| DED TP | - | Dedicated Trunk Port |
| DTT | - | Direct Trunked Transport |
| EF | - | Entrance Facility |
| EO | - | End Office |
| EU | - | End Users |
| LS | - | Local Switching |
| MUX | - | DTT Multiplexer |
| SWC | - | Serving Wire Center |

## 6. SWITCHED ACCESS SERVICE

### 6.1 GENERAL
### 6.1.2 RATE CATEGORIES (Cont'd)

## EXAMPLE 6

**Switched Access Service Ordered to a Company Hub**




| | | |
|---|---|---|
| AT | - | Access Tandem |
| ATTP | - | Access Tandem Trunk Port |
| CL | - | Common Line |
| CP | - | Customer's Premises |
| CT MUX | - | Common Transport Multiplexing |
| DED TP | - | Dedicated Trunk Port |
| DTT | - | Direct Trunked Transport |
| EF | - | Entrance Facility |
| EO | - | End Office |
| EO SP | - | End Office Shared Port |
| EU | - | End User |
| HUB | - | HUB Location |
| LS | - | Local Switching |
| MUX | - | EF Multiplexer |
| SWC | - | Serving Wire Center |
| TS | - | Tandem Switching |
| TT | - | Tandem Transmission |

## 6. SWITCHED ACCESS SERVICE

### 6.1 GENERAL

#### 6.1.2 RATE CATEGORIES (Cont'd)

**EXAMPLE 7**

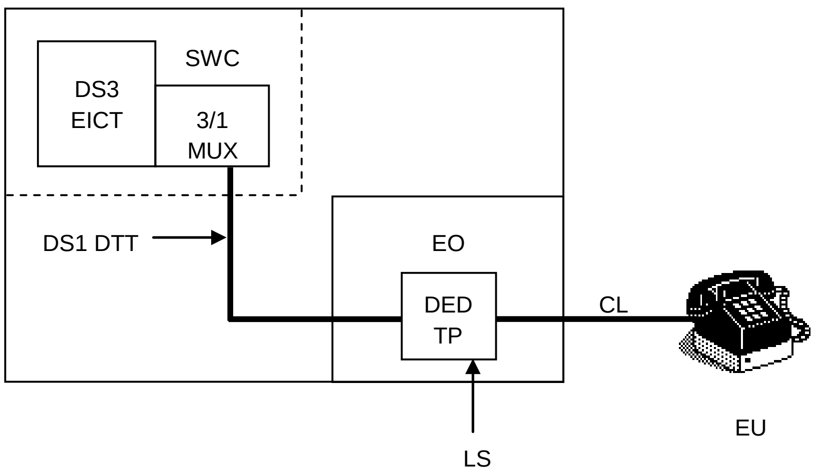
**Reserved for Future Use**

## 6. SWITCHED ACCESS SERVICE

### 6.1 GENERAL
### 6.1.2 RATE CATEGORIES (Cont'd)

**EXAMPLE 8**

**Switched Access Service Connected to Expanded Interconnection-Collocation**




| | | |
|---|---|---|
| CL | - | Common Line |
| DED TP | - | Dedicated Trunk Port |
| DTT | - | Direct Trunked Transport |
| EICT | - | Expanded Interconnection-Collocation Channel Term |
| EO | - | End Office |
| EU | - | End User |
| LS | - | Local Switching |
| MUX | - | EF Multiplexer |
| SWC | - | Serving Wire Center |

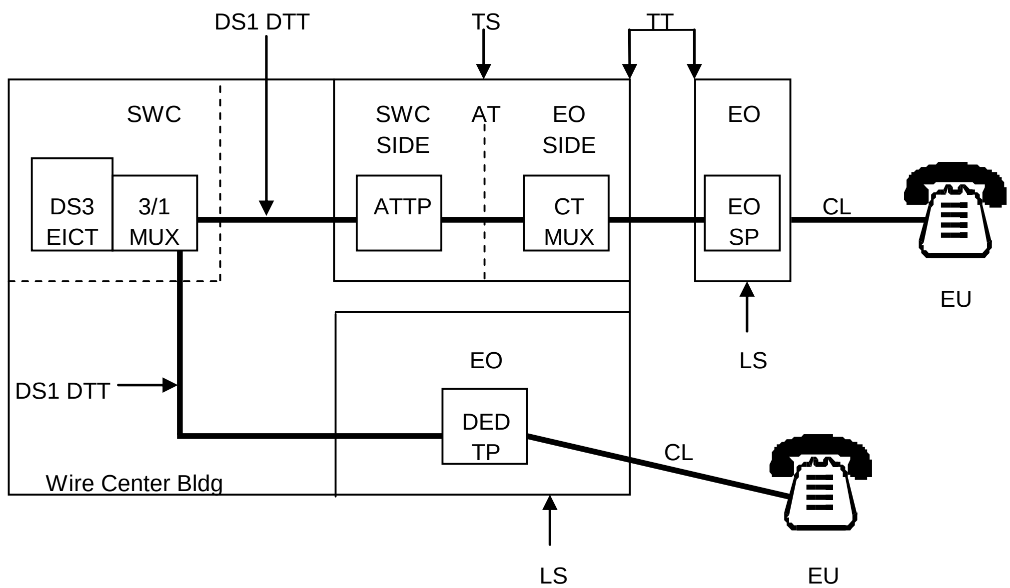
## 6. SWITCHED ACCESS SERVICE

### 6.1 GENERAL

### 6.1.2 RATE CATEGORIES (Cont'd)

**EXAMPLE 9**

**Switched Access Service Connected to Expanded Interconnection-Collocation**



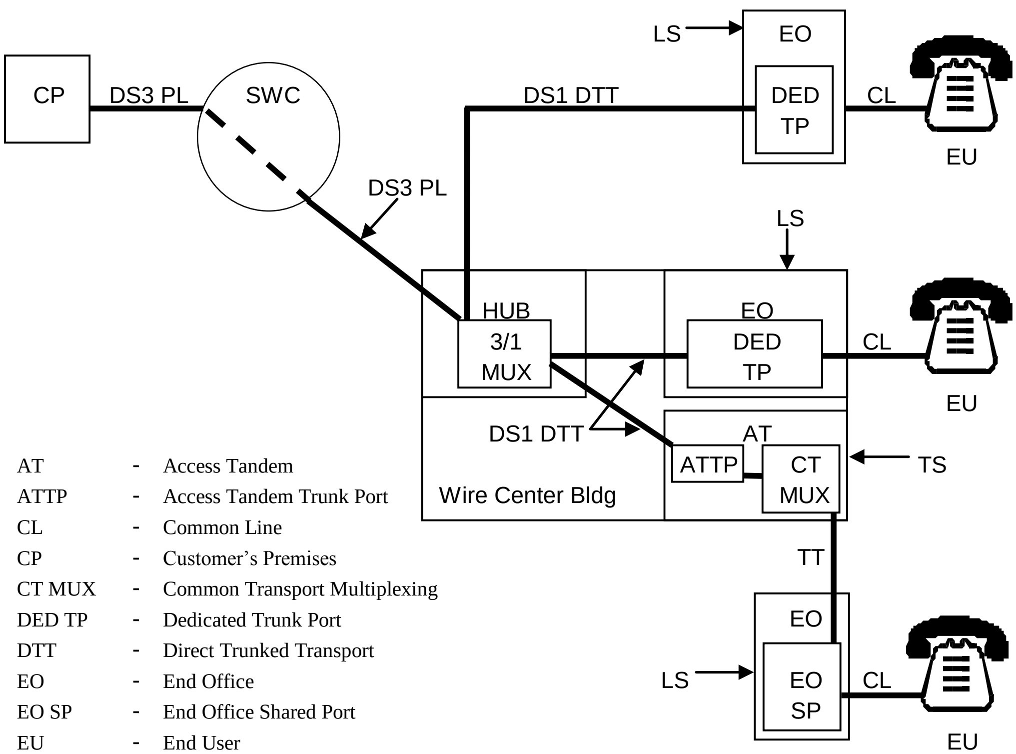

| | | |
|---|---|---|
| AT | - | Access Tandem |
| ATTP | - | Access Tandem Trunk Port |
| CL | - | Common Line |
| CT MUX | - | Common Transport Multiplexing |
| DED TP | - | Dedicated Trunk Port |
| DTT | - | Direct Trunked Transport |
| EICT | - | Expanded Interconnection-Collocation Channel Term |
| EO | - | End Office |
| EO SP | - | End Office Shared Port |
| EU | - | End User |
| LS | - | Local Switching |
| MUX | - | SWC Multiplexer |
| SWC | - | Serving Wire Center |
| TS | - | Tandem Switching |
| TT | - | Tandem Transmission |

## 6. SWITCHED ACCESS SERVICE

### 6.1 GENERAL
### 6.1.2 RATE CATEGORIES (Cont'd)

**EXAMPLE 10**

**Private Line Service and Switched Access Ordered to a Company Hub**




| | | |
|---|---|---|
| AT | - | Access Tandem |
| ATTP | - | Access Tandem Trunk Port |
| CL | - | Common Line |
| CP | - | Customer's Premises |
| CT MUX | - | Common Transport Multiplexing |
| DED TP | - | Dedicated Trunk Port |
| DTT | - | Direct Trunked Transport |
| EO | - | End Office |
| EO SP | - | End Office Shared Port |
| EU | - | End User |
| HUB | - | HUB Location |
| LS | - | Local Switching |
| MUX | - | EF Multiplexer |
| PL | - | Private Line |
| SWC | - | Serving Wire Center |
| TS | - | Tandem Switching |
| TT | - | Tandem Transmission |

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES (Cont'd)**

A. Switched Transport

1. General Description

The Switched Transport rate category provides the transmission facilities between the customer's premises and the end office switch(es) where the customer's traffic is switched to originate or terminate its communications.

Switched Transport is a two-way voice-frequency transmission path composed of an Entrance Facility (EF) and a Direct-Trunked Transport (DTT) facility for direct routed traffic. For tandem routed traffic, the Switched Transport is composed of an EF, a DTT to an access tandem and Tandem-Switched Transport (TST) from the access tandem to the subtending end offices. The transmission path permits the transport of calls in the originating direction (from the end user's end office switch to the customer's premises) and in the terminating direction (from the customer's premises to the end office switch), but not simultaneously. The voice-frequency transmission path may be comprised of any form or configuration of plant capable of and typically used in the telecommunications industry for the transmission of voice and associated telephone signals within the frequency bandwidth of approximately 300 to 3000 Hz.

When a Switched Access Service connects to EIC Service as set forth in Section 21, following, the Switched Access Service designated serving wire center and customer point of interconnection are defined as set forth in 6.1.1, preceding.

The Company will work cooperatively with the customer in determining (1) the EF, (2) whether the service is to be directly routed or routed through an access tandem switch, (3) the directionality of the service and (4) hubbing arrangements. Switched Transport optional features are provided as set forth in 4., following.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**
A. Switched Transport
1. General Description (Cont'd)

Switched Transport is provided at the rates and charges set forth in 6.8, following. The application of these rates with respect to the different types of service is as set forth in 6.7.1, following.

Switched Access is ordered under the access order provisions as set forth in Section 5, preceding. Design and traffic routing of Switched Access Service is described in 6.5.2, following.

Switched Transport is composed of an Entrance Facility (EF) rate category, as described in a., following, a Direct-Trunked Transport (DTT) rate category, as described in b., following and a Tandem-Switched Transport (TST) rate category, as described in c., following.

a. Switched Transport EF Rate Category

An EF provides the communication path between a customer's premises and the Telephone Company serving wire center (SWC) of that premises for the sole use of the customer. The EF rate category is composed of a Voice Grade rate, a DS1 rate or a DS3 rate. An EF is provided even if the customer's premises and the SWC are located in the same building. The types of facilities available for Entrance Facilities are described in 2., following.

The EF rate category does not apply when Switched Access Service connects to EIC Service as set forth in Section 21, following.

When TRS is provided, as set forth in Section 13.14, following, an EF is assessed to the TRS provider for the communications path between the TRS provider's premises and the SWC of that premises and the 101XXXX provider is assessed an EF for the path between the IC's premises and the SWC of that premises.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**

A. Switched Transport

1. General Description (Cont'd)

b. Switched Transport DTT Rate Category

DTT provides the transmission path on circuits dedicated to the use of a single customer between:

- the customer's SWC and an end office, or
- the customer's SWC and an access tandem, or
- the customer's SWC and a Company Hub where multiplexing functions are performed, or
- a Company Hub and an end office, or
- a Company Hub and an access tandem.

The DTT rate category is composed of a monthly fixed rate and a monthly per-mile rate based on the facility provided, (i.e., Voice Grade, DS1 or DS3). The fixed rate provides the circuit equipment at the ends of the transmission paths. The per-mile rate provides the transmission facilities, including intermediate transmission circuit equipment, between the end points of the circuit. The DTT rate is the sum of the fixed rate and the per-mile rate. For purposes of determining the per-mile rate, mileage will be measured as airline mileage using the V & H coordinates method. Mileage measurement rules are set forth in 6.7.11, following. The types of facilities available for DTT are described in 2., following.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**
A. Switched Transport
1. General Description (Cont'd)

c. Switched Transport TST Rate Category

TST provides the transmission facilities between an access tandem and end offices subtending that tandem utilizing tandem switching functions. TST is not available from or to a Company Hub. TST consists of circuits used in common by multiple customers from the access tandem to an end office. For TST, the Company will determine the type of facilities to the end office(s) based on the customer's order for service on a per-trunk basis. For examples of Tandem (C)
Switched Transport see Section 2.4.7 preceding. (C)

The TST rate category is composed of the rate elements set forth in (1) through (4), following. Rates and charges are set forth in 6.8, following.

(1) Tandem Transmission

Tandem Transmission is composed of a fixed per-MOU rate and per-mile/per-MOU rate. The fixed rate provides for the circuit equipment at the end of the interoffice transmission paths. The per-mile rate provides for the transmission facilities, including intermediate transmission circuit equipment between the end points of the interoffice circuit. For purposes of determining the per-mile rate, mileage will be measured as airline mileage using the V & H coordinates method. Mileage measurement rules are set forth in 6.7.11, following.

## 6. SWITCHED ACCESS SERVICE

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**
A. Switched Transport
1. General Description
c. Switched Transport TST Rate Category (Cont'd)

(2) Tandem Switching

Tandem Switching is a per-MOU rate assessed for utilizing tandem switching functions when tandem routing is requested for trunkside services. Tandem Switching is not assessed to FGA or CSL services.

(3) Access Tandem Trunk Port

An access tandem trunk port (ATTP) is provided for each trunk terminated on the serving wire center side of the access tandem when the customer has requested tandem routing. The ATTP rate is assessed monthly per Feature Group or BSA trunk (excludes FGA and CSL).

(4) Common Transport Multiplexing

Common transport multiplexing equipment is utilized in the end office side of the access tandem when common transport is provided between the access tandem and the subtending end offices. This rate is assessed on a per-MOU basis. (Multiplexing equipment associated with a DTT facility ordered to the access tandem is provisioned on the SWC side of the access tandem. Multiplexing rates for EF and DTT facilities are described in A.4., following, and if assessed, are in addition to the common transport multiplexing rates.)

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**
A. Switched Transport (Cont'd)

2. Switched Transport Facilities

Customers requesting Lineside or Trunkside Switched Access service shall specify the type of Entrance Facility (Voice Grade, DS1 or DS3) between the customer's premises and the SWC. The customer shall also specify if tandem routing or direct routing will be utilized for trunkside services. If tandem routing is desired, the customer must specify the type of DTT facility (Voice Grade, DS1 or DS3) to be utilized from the SWC to the access tandem and the Company will determine the type of facilities (i.e., common transport) to the subtending end offices. Tandem routing is not available for Lineside Switched Access Service. If direct routing is requested, the customer shall specify the type of DTT facility (Voice Grade, DS1 or DS3) to be utilized from the SWC to the end office.

There are three types of facilities, Voice Grade, DS1 or DS3 ordered and provided as set forth in this section, available to the customer for Entrance Facilities and DTT facilities for Lineside or Trunkside Switched Access Service.

Switched Access Service may be ordered in conjunction with DS3 Private Line Transport Service (PLTS), ordered and provided from Section 7, following, with a DS3 EF Electrical capacity of two or greater or any Optical Interface under the provisions of Shared Use only as set forth in 2.7, preceding.

Switched Access Service may also be ordered in conjunction with Synchronous Service Transport (SST) PLTS, with a high capacity channel for synchronous transmission of Optical Capacity (OC) bandwidth ranging from 155.52 Mbps (OC-3), 622.08 Mbps (OC-12), 1.244 Gbps (OC-24), 2.488 Gbps (OC-48) or 9.952 Gbps (OC192) under the provisions of Shared Use only as set forth in 2.7, preceding.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**
A. Switched Transport
2. Switched Transport Facilities (Cont'd)

Following is a brief description of each type of facility available for Switched Access Service. Each type has its own characteristics and is available with EF and DTT multiplexing options as set forth in 4., following.

a. Voice Grade Facility

Voice Grade facilities are available for Entrance Facilities and for DTT facilities. A Voice Grade facility is an electrical communications path which provides voice-frequency transmission in the nominal frequency range of 300 to 3000 Hz and may be terminated two-wire or four-wire. Compatible Interface Groups are described in 3., following.

b. DS1 Facility

DS1 facilities are available for Entrance Facilities and for DTT facilities. A DS1 facility is capable of transmitting electrical signals at a nominal 1.544 Mbps, with the capability to channelize up to 24 voice-frequency transmission paths. Compatible Interface Groups are described in 3., following.

c. DS3 Facility

DS3 facilities are available for Entrance Facilities and DTT facilities. A DS3 facility is capable of transmitting electrical signals at a nominal 44.736 Mbps, with the capability to channelize up to 672 voice-frequency transmission paths. Compatible Interface Groups are described in 3., following.

## 6. SWITCHED ACCESS SERVICE

### 6.1 GENERAL

### 6.1.2 RATE CATEGORIES

A. Switched Transport (Cont'd)

d. Hubbing

Hubbing arrangements requested from the SWC to a hub location, or from one hub location to a different hub location, shall be ordered out of this section as DTT for Switched Access only. Hubbing arrangements ordered from Section 7 for the provision of Shared Use services can be utilized for both PLTS and Switched Access Service.

When the SWC is in the same wire center building as an end office, access tandem and/or hub, the customer must order DTT from the SWC as set forth in A.1. and 2., preceding. A multiplexing function performed in the SWC for an EF is not a hubbing arrangement.

A hub is a Company designated wire center, other than the SWC, at which multiplexing functions are performed. Hubbing allows the customer to terminate a DTT facility to a hub so that the facility can be de-multiplexed to a lower capacity and the lower capacity DTT facility is then routed to an access tandem, end office or another hub. When the customer requests DTT from the SWC to a hub and facilities from the hub to an access tandem, the customer must order DTT from the hub to the access tandem and TST from the access tandem to end offices subtending that tandem.

Multiplexing functions for EF and DTT facilities are described in 4., following. Hub locations and the types of multiplexing available at each location for DS1 facilities are specified in the NECA Tariff F.C.C. No. 4. For DS3 facilities, the Company will work cooperatively with the customer to provide the desired hubbing arrangements.

For service rearrangements introducing or changing a hub location, see 6.7.1.C.7., following.

**6.1 GENERAL**

**6.1.2 RATE CATEGORIES**

A. Switched Transport (Cont'd)

3. Interface Groups

Four Interface Groups are provided for terminating Switched Transport at the customer's premises. Each Interface Group provides a specified premises interface (e.g., two-wire, four-wire, DS1, etc.). Where transmission facilities permit, the individual transmission path between the customer's premises and the first point of switching may, at the option of the customer, be provided with optional features as set forth in 4., following.

As a result of the customer's access order and the type of Company transport facilities serving the customer's premises, the need for signaling conversions or two-wire to four-wire conversions, or the need to terminate digital or high frequency facilities in channel bank equipment, may require that Company equipment be placed at the customer's premises. For example, if a voice-frequency interface is ordered by the customer and the Company facilities serving the customer's premises are digital, then Company channel bank equipment must be placed at the customer's premises in order to provide the voice-frequency interface ordered by the customer.

Interface Group Transmission Specifications and Data Transmission Parameters are delineated in Technical Reference GR-334-CORE.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**
A. Switched Transport
3. Interface Groups (Cont'd)

Only certain Network Channel Interface codes (NCI) are available at the customer's premises. The NCI codes associated with the Interface Groups may vary among different types of service based on the technical requirements. The various premises interfaces which are available with the Interface Groups, and the types of service with which they may be used, are set forth in e., following.

Based upon the Interface Group chosen by the customer, EF and DTT multiplexing arrangements may be required. Multiplexing arrangements are described in 4., following.

When Switched Access Service is ordered in conjunction with Private Line Transport Service provisioned with an Electrical capacity of two or greater or any Optical Interface, the common interface is provisioned under the rules and regulations for Shared Use referenced in 2.7, preceding. Technical specifications are delineated in Qwest Corporation Technical Publication PUB 77324.

When Interface Groups 1, 2, 6 or 9 are associated with CST3 or FGD Service with SS7 out of band signaling, no signaling will be done via the message channel.

When *SWITCHNET 56* Service is ordered in conjunction with CST3 or FGD, it requires the use of a separate trunk group equipped with Interface Group 6. This service allows a customer to establish a connection between the customer's premises and a suitably equipped end user premise over facilities capable of transmitting digital data at 56 kbps.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**
A. Switched Transport
3. Interface Groups (Cont'd)

a. Interface Group 1

Interface Group 1, except as set forth in the following, provides two-wire voice-frequency transmission at the customer's premises.

Interface Group 1 is not provided in association with Trunkside Access when the first point of switching is an access tandem. In addition, Interface Group 1 is not provided in association with Trunkside Access when the first point of switching provides only four-wire terminations.

b. Interface Group 2

Interface Group 2 provides four-wire voice-frequency transmission at the customer's premises.

c. Interface Group 6 - BSE

Interface Group 6 provides DS1-level digital transmission at the customer's premises. The interface may be provided with Clear Channel Capability (BSE).

d. Interface Group 9

Interface Group 9 provides DS3-level digital transmission at the customer's premises.

e. Available Premises Interface Codes

The NCI codes available for each Interface Group are set forth in Qwest Corporation Technical PUB 77203. The provision of some NCI codes generally requires placement of the Company equipment at the customer's premises.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**
A. Switched Transport (Cont'd)

4. Optional Features

Where transmission facilities permit, the Company will, at the option of the customer, provide the following Switched Transport optional features at the rates and charges set forth in 6.8, following.

a. POT Supervisory Signaling Arrangements

Where the transmission parameters permit, and where signaling conversion is required by the customer to meet its signaling capability, the customer may order a POT supervisory signaling arrangement for each transmission path. Available supervisory signaling arrangements for Lineside and Trunkside terminations are set forth in 3., preceding. Technical specifications for supervisory signaling are delineated in Technical Reference GR-334-CORE.

b. Customer Specified Entry Switch Receive Level

This feature allows the customer to specify the receive transmission level at the first point of switching. The range of transmission levels which may be specified is described in Technical Reference GR-334-CORE. This feature is available with Interface Groups 2, 6 and 9 for CSL, CST1, Feature Groups A and B.

c. Customer Specification of Switched Transport Termination

This option allows the customer to specify, for CST1 or for Feature Group B routed directly to an end office or an access tandem, a four-wire termination of the Switched Transport at the entry switch in lieu of a Company selected two-wire termination. This option is available only when the CST1 or Feature Group B arrangement is provided with Transmission Type B1 performance.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**
A. Switched Transport
4. Optional Features (Cont'd)

d. Self Healing Alternate Route Protection (SHARP)

Self Healing Alternate Route Protection (SHARP) provides added reliability to Trunkside Switched Access Service transported over fiber optic facilities. This feature provides a separate facility path for the protection system between the Telephone Company serving wire center and the Telephone Company point of termination located in the same building as the customer's designated premises.

This added protection is provided by ensuring that backup electronics and two physically separate facility paths are used in the provisioning of the service. A primary (or working) service path is established between the serving wire center and the customer designated premises. A secondary (or protect path) is provisioned on a Company provided fiber based DS1 or DS3 facility between the customer designated premises and the serving wire center via a Telephone Company designated alternate wire center. Due to constraints of the local network architecture as determined by the Telephone Company, there may be occasions where the service will be provisioned without the use of an alternate wire center. Should the working path or electronics fail, or the service performance becomes impaired, the service will automatically switch to the service protect path in order to maintain a near continuous flow of information between locations.

This optional feature is only available for Entrance Facilities with Trunkside Switched Access Services associated with Interface Groups 6 and 9.

When a customer desires SHARP protection for a particular trunk group, all trunks in that trunk group must be ordered with the SHARP optional feature.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**
A. Switched Transport
4. Optional
d. Self Healing Alternate Route Protection Features (SHARP) (Cont'd)

The Company will establish, at a minimum of one DS1 SHARP facility, the number of DS1 or DS3 SHARP facilities required.

Technical Specifications for SHARP are delineated in Qwest Corporation Technical Publication PUB 77340.

Rates and charges are described as set forth in 6.7.1., following.

The offering of SHARP requires the use of existing fiber optic facilities. Should facilities not be available, it may be necessary to construct such facilities either as (1) normal or (2) Special Construction. If Special Construction is involved, the regulations as set forth in CenturyLink Operating Companies Tariff F.C.C. No. 12, 2.6.4.D.1., apply. For a list of facility locations where SHARP may be available as normal construction, see National Exchange Carrier Association Inc., Tariff F.C.C. No. 4.

e. Multiple POTs Tandem Sectorization (MPTS)[1]

Multiple POTs Tandem Sectorization (MPTS) is an optional feature designed to meet the traffic routing requirements of customers whose CST2, CST3, Feature Group C and D originating Switched Access Services are routed through an access tandem from multiple customer points of termination (POTs).

[1] Effective February 20, 1999, MPTS is limited to existing customers on existing MPTS trunk groups only. Customers with MPTS in service may augment existing MPTS trunk groups until the service is moved or disconnected. If the service is moved or disconnected, MPTS may not be reestablished.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**
A. Switched Transport
4. Optional
e. Multiple POTs Tandem Sectorization (MPTS) (Cont'd)

MPTS is available in connection with originating CST2, CST3, Feature Group C and D Services. MPTS allows originating CST2, CST3, Feature Group C and D traffic to be directed via an access tandem to a specific POT designated by the customer. MPTS permits customers with multiple customer points of termination (POTs) within a tandem serving area to balance the call volume within their respective networks. MPTS may be used in conjunction with the Common Switching Optional Feature Service Class Routing (e.g., 8XX, 900, Operator), as specified in 6.3.1, following, with the exception of *SWITCHNET*.

End offices subtending the tandem serving area will be divided into sectors, referred to as CST2, CST3, Feature Group C and D Tandem Sectors, which will be defined by the Company. Each tandem sector must be treated as a unit and cannot be subdivided. Tandem sectors are standard for all customers who purchase MPTS. MPTS must be ordered to every sector of an access tandem. A customer with multiple POTs within the tandem serving area can designate to which POT the traffic from a specific tandem sector will be routed. For example, a customer with multiple POTs can request that all originating calls from a tandem sector be directed to a single POT. In addition, originating traffic from a different tandem sector could be routed to the same POT or a different POT as designated by the customer.

Tandem routed traffic can be delivered to a minimum number of two POTs and a maximum number of POTs that is less than or equal to the number of tandem sectors defined for a particular tandem. The end offices associated with the tandem sectors can be found in the Qwest Corporation Tandem Sectorization Guide.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**
A. Switched Transport
4. Optional
e. Multiple POTs Tandem Sectorization (MPTS) (Cont'd)

The Company shall not be required to route traffic from a tandem sector to more than one POT unless the customer has the optional feature, Service Class Routing as described in 6.3.1.L., following, in addition to MPTS. Tandem routed traffic with Service Class Routing can be delivered by traffic type to a minimum number of one POT and a maximum number of POTs that is less than or equal to the number of tandem sectors defined for a particular tandem. A maximum number of four (4) trunk groups with mixed traffic types in accordance with the Service Class Routing specifications is allowed for each designated tandem sector. Each traffic type (e.g., 8XX, 900, MTS) within a tandem sector can be designated to the same POT or different POTs. A customer with multiple POTs must direct all originating calls from a tandem sector to a single POT by traffic type.

MPTS in conjunction with Service Class Routing - A customer may designate one to four POTs per traffic type. For example, when MPTS is ordered for a specific tandem, it is possible to route all of a particular traffic type (e.g., 8XX or Operator) to only one POT subtending that tandem, as long as other traffic type(s) comply to the stated MPTS guidelines of directing traffic to multiple POTs within a tandem serving area as referred to in 6.3.1.L., following.

MPTS in conjunction with Alternate Traffic Routing - If a customer wants a direct trunk group from an end office to alternate route to a tandem routed trunk group subtending the same end office, the customer can designate the direct routed traffic sent to any POT, but the tandem routed trunk group must be routed to the customer designated point of termination (POT) that is specified for the tandem sector as referred to in 6.3.1.M., following.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**
A. Switched Transport
4. Optional (Cont'd)

f. Multiplexing for EF and DTT facilities

Multiplexing provides the capability of converting the capacity or bandwidth of a facility from a higher level to a lower level or from a lower level to a higher level. Multiplexing functions for an EF are available at a SWC. For DTT facilities, multiplexing is available at a Company Hub, end office or access tandem. Multiplexing arrangements are associated with the facility with the higher capacity or bandwidth (e.g., a DS1 to Voice Grade multiplexing arrangement is associated with the facility using a DS1 connection). (Common transport multiplexing, as described in A.1, preceding, is provided on the end office side of the access tandem when tandem routing is requested.)

EF and DTT multiplexing arrangements may be connected to an Expanded Interconnection-Collocation Channel Termination as set forth in Section 21, following.

EF and DTT multiplexing arrangements are described following.

<u>DS1 to Voice Grade</u>

DS1 to Voice Grade multiplexing is an arrangement that provides a Company multiplexer which converts a DS1 channel to twenty-four Voice Grade channels utilizing time division multiplexing. For example, the customer has the option of ordering a DS1 to Voice Grade multiplexer for a DS1 Entrance Facility at the SWC when Voice Grade DTT is requested to an end office.

<u>DS3 to DS1</u>

DS3 to DS1 multiplexing is an arrangement which converts a DS3 channel to twenty-eight DS1 channels utilizing time division multiplexing. The twenty-eight channels may be further multiplexed utilizing DS1 to Voice Grade multiplexing equipment.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**
A. Switched Transport
4. Optional
f. Multiplexing for EF and DTT facilities (Cont'd)

EF and DTT multiplexing equipment is provided at no charge by the Company (at a location determined by the Company as part of its overall network design) when the following conditions exist:

- a DTT at a DS1 level is requested from a SWC to an access tandem in conjunction with TST from an access tandem to subtending end offices, or
- a DS1 DTT facility terminates in an end office except when Lineside and Trunkside Access are combined on the same facility.

If the customer chooses to order multiplexing equipment at a location other than the location determined by the Company, the customer will be assessed EF and DTT multiplexing rates and charges.

EF and DTT multiplexing arrangements are required and the customer is assessed multiplexing rates and charges as set forth in 6.8, following, when the following conditions exist:

- a DS3 EF facility is requested, or
- a DS3 EF connects to a DS1 DTT facility, or
- a DS3 EF is requested with a DS3/DS1 multiplexer and a DS1/DS0 multiplexer for connection to a Voice Grade DTT facility, or
- a DS1 EF connects to a Voice Grade DTT facility, or
- a higher capacity DTT facility connects to a lower capacity DTT facility at a Company Hub, or
- a DS1 DTT facility transports a combination of Lineside and Trunkside Access to an end office on the same facility, or
- Shared Use facilities are requested.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**
A. Switched Transport
4. Optional (Cont'd)

g. Tandem Signaling Information Option

Tandem Signaling Information (TSI) is an option of a DTT facility that routes traffic direct to an end office, not through a Company provided tandem. TSI provides the capability of transporting in-band (MF) or out of band (SS7) signaling information over EF and DTT facilities for the purpose of providing tandem signaling information between a customer-provided tandem switch premises and a Company end office. In-band TSI provides the Carrier Identification Code (CIC) which identifies the interexchange carrier and the 0ZZ code which identifies the interexchange carrier trunk to which traffic should be directly routed. For out of band TSI, the CIC and 0ZZ code equivalent is provided in the Transit Network Selection (TNS) and the Network Identification Code (NIC) of the SS7 parameter initial address message. When a customer requires TSI to be provided out of band, the customer must order CCSAC service using the Common Channel Signaling Network (CCSN) as set forth in Section 20, following.

When TSI is ordered on a directly routed DTT facility, only CST3 or FGD Service may be transported over the facility.

## 6.1 GENERAL
### 6.1.2 RATE CATEGORIES (Cont'd)

B. Local Switching

The Local Switching rate category provides the local end office switching, end user line termination and intercept functions necessary to complete the transmission of Switched Access Communications to and from the end users served by the local end office. The Local Switching rate categories are described following. Local Switching rates are set forth in 6.8, following. The application of these rates with respect to the different types of service is as set forth in 6.7.1, following.

1. Local End Office Switching Functions

a. Common Switching

Common Switching provides the local end office switching functions associated with the various access switching arrangements. The services arrangements (e.g., Features Group Arrangements and BSAs) are described in 6.2, following.

Included as part of Common Switching are various optional features and BSEs which the customer can order to meet its specific communications requirements. These optional features and BSEs are described in 6.3.1, following.

b. Transport Termination

Transport Termination provides for the lineside or trunkside arrangements which terminate the Switched Transport facilities. Included as part of Transport Termination are various optional termination arrangements and BSEs. These optional terminating arrangements and BSEs are described in 6.3.2, following.

The number of Transport Terminations provided for the lineside or trunkside arrangement will be determined by the Company as set forth in 6.5.8, following. The number of transmission paths will be determined as set forth in 6.5.7, following.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**

B. Local Switching (Cont'd)

2. Line Termination Functions

WATS Access Line Terminations are provided for end user lines terminating in the local end offices.

The WATS Access Line Terminations are differentiated by line vs. trunk-side terminations. In addition, there are various types of originating and terminating line-side terminations depending on the type of signaling associated with the WATS Access Line. Line-side terminations are available with either dial-pulse or dual-tone multifrequency address signaling.

Trunk-side terminations are available for WATS Access Lines equipped with Answer Supervision. Only originating WATS Access Lines may be ordered with the Answer Supervision optional feature. The terminations for Answer Supervision use reverse battery type supervisory signaling. The reverse battery and E&M interfaces for two-wire or four-wire may be provided where operating conditions permit. For other technical details see Technical Reference GR-334-CORE.

3. Intercept Function

The Intercept Function provides for the termination of a call at a Company Intercept operator or recording. The operator or recording tells a caller why a call, as dialed, could not be completed, and if possible, provides the correct number.

**6.1 GENERAL**

**6.1.2 RATE CATEGORIES**

B. Local Switching (Cont'd)

4. Local Switching Rate Categories

a. The Local Switching per-MOU rate element is divided into four distinct categories, LS1 and LS2 for Feature Group arrangements, LS3 and LS4 for CSL and CST serving arrangements.

LS1 provides local dial switching for Feature Groups A, B and bundled DID, except for FGA and FGB used to terminate traffic to a WATS Access Line provided from an end office.

LS2 provides local dial switching for Feature Groups C and D, for FGA and FGB used to terminate traffic to a WATS Access Line provided from an end office, and for Feature Groups A and B originating or terminating access minutes when the service is provided to customers who furnish interstate MTS/WATS.

LS3 provides local dial switching for CSL, CST1 and unbundled DID service, except for CSL and CST1 used to terminate traffic to a WATS Access Line provided from an end office.

LS4 provides local dial switching for CST2 and CST3, for CSL and CST1 used to terminate traffic to a WATS Access Line provided from an end office, and for CSL and CST1 originating or terminating access minutes when the service is provided to customers who furnish interstate MTS/WATS.

Where end offices are appropriately equipped, international dialing may be provided as a capability associated with LS2 and LS4. International dialing provides the capability of switching international calls with service prefix and address codes having more digits than are capable of being switched through a standard CST2, CST3, FGC or FGD equipped end office.

**6.1 GENERAL**
**6.1.2 RATE CATEGORIES**
B. Local Switching
4. Local Switching Rate Categories (Cont'd)

b. End Office Shared Port

The End Office Shared Port rate provides for the termination of common transport trunks in shared end office ports and in remote switching system or module (RSS or RSM) ports. The End Office Shared Port rate is assessed on a per-MOU basis to all trunkside originating and terminating access minutes utilizing tandem routing to an end office. If tandem routing is being utilized to a RSS or RSM (via a host office), the shared port rate is assessed to the access minutes originating or terminating from that RSS or RSM and is not assessed at the host office. If the customer has requested direct routing from the SWC to a RSS or RSM (via a host office), the End Office Shared Port rate is assessed to the access minutes originating or terminating from the RSS or RSM. This rate is in addition to the End Office Dedicated Trunk Port rate assessed for the dedicated trunk terminating in the host office as described below. The port charge is not assessed to FGA, CSL or Voice DA traffic.

c. End Office Dedicated Trunk Port

The End Office Dedicated Trunk Port rate provides for termination of a trunk to a dedicated trunk port in an end office. The rate is assessed per month for each FG or BSA trunk in service (excludes FGA and CSL) directly routed (via DTT) between the SWC and the end office. The rate is not assessed to trunks directly routed to a Voice DA location.

## 6.1 GENERAL (Cont'd)

### 6.1.3 SPECIAL FACILITIES ROUTING

Any customer may request that the facilities used to provide Switched Access Service be specially routed. The regulations, rates and charges for Special Facilities Routing (i.e., Diversity) are as set forth in Section 11, following.

### 6.1.4 DESIGN LAYOUT REPORT

The Company will provide to the customer the makeup of the facilities and services provided from the customer's premises to the first point of switching or from the customer's point of interconnection to the first point of switching when Switched Access Service connects to EIC Service, as set forth in Section 21, following. This information will be provided in the form of a Design Layout Report. Design Layout Reports will also be provided for designed WATS Access Lines (i.e., the Private Line Transport Services) in acceptance with the provisions of 7.1.C., following. The Design Layout Report will be provided to the customer at no charge, and will be reissued or updated whenever these facilities are materially changed.

### 6.1.5 ACCEPTANCE TESTING

At no additional charge, the Company will perform acceptance testing at the time of installation. Acceptance tests will be performed to insure that the service is operational and meets applicable technical parameters. The Company will, at the customer’s request, schedule a mutually agreeable time to perform acceptance testing in cooperation with the customer. If the customer is unable to participate in the acceptance testing, or if the customer requests that service installation be completed, without their presence, the service is assumed to be accepted (i.e., blind acceptance) by the customer.

## 6.1 GENERAL (Cont'd)

### 6.1.6 ORDERING OPTIONS AND CONDITIONS

Switched Access Service is ordered under the Access Order provisions set forth in Section 5, preceding. Also included in that section are other charges which may be associated with ordering Switched Access Service (e.g., Cancellation Charges, etc.).

### 6.1.7 SPECIAL HIGH VOLTAGE PROTECTIVE APPARATUS

If Switched Access Service terminates in a high voltage environment, such as an electric power station, Special High Voltage Protective Apparatus may be required as set forth in 13.7, following.

## 6.1 GENERAL (Cont'd)

### 6.1.8 GENERIC NAMES

The following list of Qwest Corporation designated BSEs identifies the generic equivalent name for each of the BSEs from Telcordia's ONA Services User Guide, dated July 31, 1991.

| GENERIC | QWEST CORPORATION |
|---|---|
| Access to Clear Channel Capability | Clear Channel Capability |
| Alternate Routing | Alternate Traffic Routing |
| Answer Supervision With a Lineside Interface | Answer Supervision - Lineside |
| Call Forwarding - Multiple Simultaneous Calls Interswitch | Call Forwarding Variable |
| Call Forwarding Variable | |
| Called Directory Number Delivery via *DID* | Called Directory Number Delivery (*DID)* |
| Calling Billing Number Delivery<br>• FGB Protocol<br>• FGD Protocol | Automatic Number Identification |
| Calling Directory Number Delivery via BCLID | Caller Identification - Bulk (BCLID) |
| Calling Directory Number Delivery via ICLID | Caller Identification - Number (ICLID) |
| *DID* Trunk Queuing | *DID* Trunk Queuing |

**6.1 GENERAL**

**6.1.8 GENERIC NAMES (Cont'd)**

| GENERIC | QWEST CORPORATION |
|---|---|
| Flexible ANI Information Digits | Flexible ANI |
| Make Busy Key | Make Busy |
| Message Desk (SMDI) | Message Delivery Service |
| Message Desk (SMDI) Expanded | Message Delivery Service - Interoffice |
| Message Waiting Indicator<br>• Activation Visual<br>• Activation Audible | |
| Multiline Hunt Group<br>• CO Announcements<br>• Uniform Call Distribution Line Hunting | Uniform Call Distribution Arrangement |
| Multiline Hunt Group<br>• Overflow<br>• Individual Access to Each Port In Hunt Group | Hunt Group Arrangement |
| Multiplexing - T1 Transport 1.544 Mbps - Lineside | Interface Group 6 |
| Three Way Call Transfer | Call Transfer |
| Three Way Calling | Three-Way Calling |
| UCD with Queuing | Queuing for Use With Uniform Call Distribution |

# Exhibit 84

## AT&T Opposition to INS Motion for Summary Judgment, *Iowa Network Servs., Inc. v. AT&T Corp.*, No. 14-3439 (D.N.J. June 1, 2015)

**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEW JERSEY**

| | | |
|---|---|---|
| IOWA NETWORK SERVICES, INC., an Iowa corporation,<br><br>Plaintiff,<br><br>v.<br><br>AT&T CORP.,<br><br>Defendant. | ) | Civil Action No. 3:14-cv-03439-JAP-LHG |

**AT&T CORP.'S BRIEF IN OPPOSITION TO INS'S MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S TARIFF CLAIMS**

**DAY PITNEY LLP**
Richard H. Brown
One Jefferson Road
Parsippany, NJ 07054
Tel: 973-966-8119
Fax: 973-206-6129
rbrown@daypitney.com

**SIDLEY AUSTIN LLP**
Michael J. Hunseder (*pro hac vice*)
1501 K Street, N.W.
Washington, DC, 20005
Phone: 202-736-8000
Fax: 202-736-8711
mhunseder@sidley.com

Attorneys for AT&T Corp.

## TABLE OF CONTENTS

# TABLE OF AUTHORITIES

**Page**

**Cases**

**Rules and Other Authorities**

Defendant AT&T Corp. ("AT&T") respectfully submits this Opposition to the Motion of Plaintiff Iowa Network Services ("INS") for Summary Judgment on Plaintiff's Tariff Claims (the "Motion") pursuant to Fed. R. Civ. P. 56.

## INTRODUCTION

INS's Motion for Summary Judgment is flawed on multiple levels, and should be denied.

*First*, even if there were no disputed material facts (and that is not the case), INS fails to show that it would be entitled to judgment as a matter of law. INS barely mentions its own claims, which are collection actions under its tariffs. INS fails even to discuss the elements of a tariff collection claim, let alone establish that it is entitled to judgment as a matter of law on each element of these claims. Even though it alleges that AT&T owes INS under the tariffs, INS does not present the invoices it sent AT&T, the amounts allegedly withheld by AT&T, or the amounts that INS is allegedly owed – and thus does not even attempt to specify its damages. Given its failure to explain either the elements of its claims or its damages – let alone to establish those issues as a matter of law and undisputed fact – INS fails to establish a *prima facie* case.

Instead, INS's Moving Brief ("INS Br.," at 10-15) focuses on AT&T's Counterclaims, which are the subject of a separate, pending motion to dismiss under Fed. R. Civ. P. 12(b)(6). INS seems to assume that, if it were to prevail on its motion to dismiss AT&T's counterclaims (which AT&T vigorously disputes), then summary judgment should be awarded to INS on its affirmative claims. As explained in more detail below, this is not true because INS's claims are distinct from AT&T's counterclaims, and AT&T has affirmative defenses to INS's claims.

*Second*, granting summary judgment would be improper under Rule 56(d) because AT&T has not been afforded discovery from INS. After the parties had exchanged discovery requests, the Court stayed discovery in this matter, and as a consequence, virtually *no* discovery has occurred.[1] INS has produced no documents, no interrogatory responses, and not a single witness for either party has been deposed. Yet, prior to the stay, both parties had submitted a joint discovery plan in which each party (i) catalogued a long list of discovery they believed relevant to the claims and disputes and (ii) agreed to a discovery schedule that was due to conclude in October, 2015. *See* Doc. 19. INS offers no explanation for its change in position that all of the discovery the parties have sought in this matter is not necessary at all. As explained below, there are numerous material facts in dispute that go to the heart of the issues before the Court. When – as here – discovery is not yet complete, the Third Circuit has held that summary judgment is "rarely justified".[2]

*Third,* even if INS had made the proper showings under Rule 56, and even if discovery had not been stayed, summary judgment would still be inappropriate because there are genuine issues of material fact, and INS has failed to establish it is entitled to judgment as a matter of law on its collection action claims. In order to succeed, INS must demonstrate, as a matter of undisputed fact, that (1) its tariffs are valid and lawful, and (2) it provided service to AT&T in accordance with the terms and conditions of those tariffs.[3] INS has not proven the absence of material fact disputes on either of these essential elements for its affirmative claims.

---

[1] *See* Declaration of Michael J. Hunseder Pursuant to Rule 56(d) ("Hunseder Decl.") ¶¶ 5-6. Indeed, given that INS has a pending Rule 12(b)(6) motion, it has not even filed an answer to AT&T's Counterclaims.

[2] *Shelton v. Bledsoe*, 775 F.3d 554, 556 (3d Cir. 2015). Because there has been no discovery, INS attempts to rely on the pleadings and a defective affidavit to establish that critical issues are undisputed when, in fact, the pleadings and other documents submitted by AT&T herewith establish the opposite. *See, e.g., infra* Parts I-III. Where AT&T has denied the allegations in INS's Complaint, it is elementary that INS cannot rely on the pleadings to establish its burdens under Rule 56.

[3] *See, e.g.*, *Advamtel, LLC v. AT&T Corp.*, 118 F. Supp. 2d 680, 683 (E.D. Va. 2000).

The evidence shows that INS's tariff is unlawful because it contains a rate that the Federal Communications Commission ("FCC") *already* has deemed unlawful and unreasonable. INS's rates exceed the FCC-ordered rate caps that apply to all types of "switched access service," including INS's Centralized Equal Access ("CEA") service.[4] While INS claims the rate is not subject to the FCC rules, that claim either is wrong or, at a minimum, requires discovery to resolve. *See infra* Part I. INS also claims that its revised tariff filings effectively amended the caps, but, as AT&T has already shown, there is no merit to the radical position that carriers can amend lawful agency rules by filing tariffs that the agency does not suspend. *Id.*

INS's tariffs are also unlawful based on a second, independent ground: the only available record evidence shows that INS is engaged in a practice known as "access stimulation."[5] Under the FCC's rules, a carrier engaged in access stimulation must file revised tariffs, yet it is undisputed that INS has not done so. The FCC has explained that, in these circumstances, failing to file revised tariffs is a "violation of the Commission's rules" which is "sanctionable" and means that the carrier's existing tariffs become "void."[6]

INS has also failed to provide valid evidence supporting the second element of its tariff collection claim, namely that it provided service to AT&T in accordance with the terms and conditions of a valid tariff. INS claims that AT&T admitted this fact in its Answer, but this assertion is demonstrably false. AT&T Answer ("Ans.") ¶ 30 ("AT&T denies" that "INS has

---

[4] *See Connect America Order*, 26 FCC Rcd. 17663, ¶¶ 800-01 (2011) ("*Connect America Order*"), *petitions for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

[5] *See infra* Part II.B. While INS presented *no* evidence addressing access stimulation, AT&T has presented evidence that a trier of fact could rely upon to find that INS is engaged in access stimulation. Indeed, the FCC has determined that evidence like that provided by AT&T "creates a rebuttable presumption" that access stimulation is occurring. *See Connect America Order* ¶ 699.

[6] *See Connect America Order* ¶ 697; *In the Matter of GS Texas Ventures, Tariff, F.C.C. No. 1*, 29 FCC Rcd 10541, ¶ 6 n.19 (2014).

properly billed AT&T under INS's tariffs and/or the FCC's rules for any services that INS provided in connection with the calls"). Discovery is necessary to determine whether INS is, in fact, providing the services described in its tariffs.

In light of (i) the numerous factual disputes that are central to the issues before the Court, (ii) the fact that, at a minimum, AT&T is entitled to discovery under Fed. R. Civ. P. 56(d), and (iii) INS's failure to establish its collection claims as a matter of law, INS's Motion for Summary Judgment should be denied.

## ARGUMENT

### STANDARDS FOR SUMMARY JUDGMENT

Summary judgment is warranted when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A material fact is genuinely in dispute "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 242-243 (1986). In determining whether such a question of fact is raised, the court must make all credibility assessments, resolve any ambiguities, and draw all inferences, in favor of the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Summary judgment may be granted only if the evidence, taken in that light, reflects that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

"The moving party 'bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.'" *El v. S.E. Pa. Transp. Auth.*, 479

F.3d 232, 237 (3d Cir. 2007) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). Where, as here, a party seeks summary judgment on a claim for which it would bear the burden of proof at trial, the movant "must show that it has produced enough evidence to support the findings of fact necessary to win." *Id.* "Put another way, it is inappropriate to grant summary judgment in favor of a moving party who bears the burden of proof at trial unless a reasonable juror would be compelled to find its way on the facts needed to rule in its favor on the law." *Id.* at 238 (citing *Matsushita Elec. Indus. Co.*, 475 U.S. at 587); *see also Nat'l State Bank v. Fed. Reserve Bank of New York*, 979 F.2d 1579, 1582 (3d Cir. 1992) ("Where the party moving for summary judgment is the plaintiff . . . the standard is more stringent" and "[t]he Third Circuit has stated that 'where the movant bears the burden of proof at trial and the motion does not establish the absence of a genuine factual issue, the district court should deny summary judgment even if no opposing evidentiary matter is presented.'" (quoting *Resolution Trust Corp. v. Gill*, 960 F.2d 336, 340 (3d Cir. 1992)).

INS has failed to satisfy this burden, both as a matter of procedure (because the Motion is premature and fails to identify or establish the elements of its claims) and of substance (because it has failed to show that there are undisputed facts in its favor on either of the two key elements of its tariff collection claims).

## I. INS'S MOTION IS PROCEDURALLY IMPROPER AND PREMATURE IN LIGHT OF THE STAY OF DISCOVERY.

Summary judgment on INS's affirmative claims is inappropriate, because discovery has been stayed and INS has provided *no discovery* in this case to date. As the Third Circuit has recognized on numerous occasions, a district court is required to give a party opposing summary judgment an adequate opportunity to obtain discovery before ruling on a pending motion. *See, e.g.*, *Dowling v. City of Philadelphia*, 855 F.2d 136, 139 (3d Cir. 1988) (citing *Celotex Corp.*, 477 U.S. at 322). "This is necessary because, by its very nature, the summary judgment process presupposes the existence of an adequate record." *Doe v. Abington Friends School*, 480 F. 3d 252, 257 (3d Cir. 2007) (citing Fed. R. Civ. P. 56(c)). Thus, it is well-established that "[i]f discovery is incomplete, a district court is rarely justified in granting summary judgment . . . ." *Shelton*, 775 F.3d at 556; *see also, e.g.*, *Sames v. Gable*, 732 F.2d 49, 51-52 (3d Cir. 1984) (holding that it was error for the district court to grant summary judgment motion while pertinent discovery requests were outstanding).

Further, Federal Rule of Civil Procedure 56(d) provides that "[i]f a movant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations to take discovery; or (3) issue any other appropriate order." Fed. R. Civ. P. 56(d). Here, discovery was stayed before INS produced documents or responded to any of AT&T's other discovery requests. Hunseder Decl. ¶¶ 5-6. As explained in more detail below in Part II, AT&T's written discovery requests include document requests and interrogatories that are essential to obtaining evidence that refutes INS's tariff-based collection claims.[7] Additionally, under the Court's scheduling order, scheduling of depositions had not even commenced when discovery was stayed. Hunseder Decl. ¶¶ 2, 5. AT&T intends to serve corporate deposition notices to INS, as well as individual notices of INS personnel with knowledge of INS's tariffs and regulatory filings that are relevant to INS's claims. Because of

[7] Among other things, AT&T has specific outstanding discovery requests regarding: agreements between INS and any Access Stimulation LEC, revisions to INS's rates, INS's June 17, 2013 submission to the FCC, the services described in the Complaint, records used by INS to bill AT&T, and documents referring to INS as a rate of return carrier. *See* Hunseder Decl. Ex. 1 (Doc. Requests Nos. 1, 2, 10, 12, 13, 15 & 19); *see also* Hunseder Decl. Ex. 2 (Interrogatories Nos. 1, 2, 3, 4, 5, 7 & 11); (Requests for Admission Nos. 1, 4 & 5).

the stay of discovery, AT&T has not been able to obtain either written discovery or deposition testimony on the many factual issues raised in INS's Motion.

In these circumstances, the incomplete state of discovery alone is sufficient to preclude summary judgment. *Miller v. Beneficial Mgmt. Corp.*, 977 F.2d 834, 845 (3d Cir. 1992). Accordingly, INS's Motion should be denied on this ground. *Shelton*, 775 F.3d at 556; *Sames*, 732 F.2d at 51-52.

In support of its Motion for Summary Judgment, INS filed an appendix containing: (1) unauthenticated excerpts of INS's tariffs, and (2) the Affidavit of Jeff Schill in Support of Plaintiff's Motion for Summary Judgment on Tariff Claims ("Schill Aff."). *See* Pl.'s App. Supp. Mot. Summ. J. on Tariff Claims ("Pl.'s App."), Exs. 1-4. The excerpts of INS's tariffs are unauthenticated and thus should not be considered as evidence in support of INS's Summary Judgment Motion. Even assuming that INS authenticated the tariff excerpts or that they could be subject to judicial notice, there is no competent evidence linking these excerpts to the services at issues. Certainly nothing in INS's Schill Affidavit lays a proper foundation.[8] Similarly, the Schill Affidavit contains no averment that the assertions made therein are based on personal knowledge, which renders the document devoid of any evidentiary value.[9] Accordingly, the Court should disregard Plaintiff's reliance on these inadmissible submissions and the assertions in Plaintiff's Rule 56.1 Statement that cite to those documents for evidentiary support. *See* Local Civ. R. 56.1(a); *Longoria v. New Jersey*, 168 F. Supp. 2d 308, 312 n.1 (D.N.J. 2001) (explaining that a district court will only treat facts in a movant's Rule 56.1 statement as admitted if they are

[8] *Red Roof Franchising LLC v. Patel*, 877 F. Supp. 2d 124, 139 (D.N.J. 2012); *Countryside Oil Co., Inc. v. Travelers Ins. Co.*, 928 F. Supp. 474, 482 (D.N.J. 1995); Fed. R. Evid. 901(a).

[9] *Pagan v. Holder*, 741 F. Supp. 2d 687, 694 n.11 (D.N.J. 2010); *Container Mfg. Inc. v. CIBA-CEIGY Corp.*, 870 F. Supp. 1225, 1231 n.6 (D.N.J. 1994) (collecting cases); Fed. R. Civ. P. 56(e)(1).

properly supported by citations to admissible evidence and not properly disputed by the non-movant).

## II. INS HAS FAILED TO ESTABLISH THAT IT HAS A VALID TARIFF.

As set forth above, one of the two essential elements of INS's tariff collection action claims is to prove that the carrier has a valid and lawful tariff.[10] INS's Complaint alleged that it had a valid and lawful tariff, *see* Compl. ¶¶ 31-32, 37-38, but AT&T denied those allegations, *see* Ans. ¶¶ 31-32, 37-38, which means that, as the plaintiff, INS cannot obtain a judgment unless and until it presents sufficient, valid evidence showing that its tariff is in fact lawful.[11] INS has failed to meet this burden, and there are two independent reasons why there are, at the very least, factual disputes as to whether INS's access tariffs are lawful and valid.

*First*, as set forth in Part II.A below, AT&T denied INS's allegations that its tariffs were valid because the rates in INS's tariffs violate FCC rules that, among other things, (1) place a rate cap on interstate access services; and (2) require LECs to lower their rates for intrastate access services over time. As set forth in Part II.A.1 below, AT&T is presenting evidence – indeed it is undisputed – that INS's interstate rates exceed the caps, and that INS has not reduced its intrastate rates. Although INS claims it is not subject to those rules, it has presented *no* evidence establishing that assertion. In any event, in support of its position that INS qualifies as an ILEC subject to the rate caps, AT&T has raised judicial estoppel as an affirmative defense,

---

[10] *Advamtel*, 118 F. Supp. 2d at 683; *see also* 47 U.S.C. § 203(a) (requiring filing of tariffs); *Qwest Commc'ns* v. *Northern Valley Commc'ns*, 26 FCC Rcd. 8332, ¶¶ 5, 6 (2011) (LECs are "required to publish the rates, terms and conditions applicable to their access service in tariffs filed with the Commission" or, in some cases, in express contracts), *recon denied*, 26 FCC Rcd. 14520 (2011), *aff'd sub nom Northern Valley Commc'ns* v. *FCC*, 717 F.3d 1017 (D.C. Cir. 2013).

[11] *See, e.g.*, *Kashelkar v. MacCartney*, 79 F. Supp. 2d 370, 373 (S.D.N.Y. 1999) ("the "legal effect" of the "filing of an answer containing denials" of allegations in a complaint is "simply to put a plaintiff to his proof as to each and every element of his claim.").

alleging that INS has for years filed tariffs as a rate-of-return regulated ILEC, and therefore is now precluded from denying that it is not a rate-of-return ILEC that is subject to the FCC's rate caps and other rules applicable to such ILECs. INS has not even addressed AT&T's defense, which raises numerous factual questions that preclude summary judgment for INS. And, even if INS were not estopped from denying that it is a rate-of-return ILEC and otherwise held not to be an ILEC for purposes of federal law, then the FCC's rules provide that, by default, INS is a competitive LEC that is also subject to the FCC's 2011 rate caps.

As set forth in Part II.A.2 below, INS also argues that it does not matter whether it is subject to or violated the caps, because it asserts that its tariff became "deemed lawful" and thereby amended the FCC's rules. As AT&T has previously explained, this brazen claim has no merit at all. AT&T Corp.'s Brief in Opposition to Plaintiff's Motion to Dismiss AT&T's Counterclaims ("AT&T MTD Opp.", Doc. No. 17) at 6-13.

*Second*, as explained in Part II.B below, even if INS were correct that it is not subject to the FCC's rules or that its tariff could lawfully amend them, there is another, independent reason why summary judgment is inappropriate. INS appears to be engaged in "access stimulation" under the FCC's rules, and, as such, it was required to make a revised tariff filing with the FCC. AT&T has presented clear evidence establishing a *prima facie* case that INS is engaged in access stimulation, and INS's Motion does not even attempt to refute that evidence or establish that it is not, in fact, engaging in access stimulation. Because there is, at a minimum, a factual dispute as to whether INS is engaged in access stimulation – which, if true, would have placed an affirmative obligation on INS to refile its tariffs (even assuming they were "deemed lawful") – summary judgment must be denied.

### A. INS's Tariff Is Invalid Because Its Rates Violate The FCC's Rules and Rate Caps, And There Are Factual Disputes That Preclude A Finding That INS Is Not Subject To The Caps And Other Rules.

As AT&T has explained, Counterclaims, ¶¶ 50-53; AT&T MTD Opp. at 15-18, the FCC in 2011 began to reform its rules applicable to access services, including INS's centralized equal access service. As part of those reforms, the FCC placed a "cap" on "all interstate switched access rates." *Connect America Order* ¶¶ 800-01. Under the cap, "all" access rates are "capped at rates in effect as of the effective date of the rules," which was December 27, 2011. *Id.* ¶ 801. In addition to the rate caps, the FCC required LECs to reduce their intrastate access rates to "parity with interstate access rate[s]." *Id.*; *see* 47 C.F.R. §§ 51.901-51.911.

Despite the rate caps, in 2013, INS raised its rate for switched access service by over 40 percent, to rates above those it had in place at the end of 2011, and INS has in fact billed AT&T at above-cap rates.[12] Further, despite the FCC's rate parity rule, INS indisputably has not reduced its intrastate access rates, and it continues to bill AT&T at intrastate access rates that unlawfully exceed INS's interstate rates.[13] As such, its tariffs (and its billed charges pursuant to those tariffs) violate the FCC's rules and the Communications Act, and are unlawful. *See* AT&T MTD Opp. at 15-18 (citing authorities).

#### 1. There Are Material Facts in Dispute As To Whether INS, As A LEC Providing Access Service, Is Subject To The FCC's Rate Caps.

As set forth above, to obtain summary judgment, INS must first produce valid evidence showing there are no material facts in dispute that preclude a finding that its tariff is lawful and valid. INS has completely failed to make such a showing. Even though INS knows that AT&T

---

[12] At the end of 2011, INS's interstate rate was 0.819 cents per minute. *See* Certification of John W. Habiak on Behalf of AT&T Corp. ("Habiak Cert.") ¶ 15. In June 2012, INS reduced this rate to .0623 cents per minute, but then it raised the rate to 0.896 cents per minute in July 2013. *Id.*

[13] Habiak Cert. ¶ 15.

has denied it is liable for INS's billed charges because INS's tariff and charges violate the FCC's 2011 rules, INS fails to address this issue, and INS presents *no* evidence proving that, as a matter of law, it is not subject to the FCC's 2011 rules.

While its Summary Judgment Motion is silent on this issue, INS has previously argued that the FCC's rate caps and rate parity rule in the *Connect America Order* do not apply to it, Compl. ¶¶ 71-80, even though the FCC plainly applied its caps to "all" interstate switched access services, including INS's CEA service.[14] According to INS, it is not subject to the FCC's rate caps and rate parity rule because it is not a "Rate-of-Return Carrier" within the meaning of the FCC's rules. *See* 47 C.F.R. § 51.903(g) (defining "Rate-of-Return Carrier"); *id.* § 51.909 (setting forth the rate caps and parity rule applicable to Rate of Return Carriers"); *see also* Compl. ¶¶ 75-77. However, even assuming, *arguendo*, that INS could establish that it is not a "Rate-of-Return Carrier" (which it has not attempted to do via valid evidence), AT&T has pleaded an estoppel defense, and has also presented evidence demonstrating that there is, at the very least, a factual issue that INS should be precluded from denying that it is a "Rate-of-Return Carrier."[15] In any event, even if INS were not precluded, and were not a "Rate of-Return Carrier," INS would still be subject to the FCC's rate caps and rate parity rule as a "Competitive LEC." *See* 47 C.F.R. § 51.903(a) (defining "Competitive Local Exchange Carrier"); *id.* § 51.911 (setting forth rate caps and rate parity rule for "Competitive LECs").

***INS Is Estopped From Denying That It Is A "Rate of Return Carrier."*** Based on the doctrine of judicial estoppel, INS is barred from claiming that it is not subject to the FCC's rules

---

[14] *Connect America Order* ¶¶ 800-01; *see also In re Application of Iowa Network Access Div.* ("*INS Order*"), 3 FCC Rcd. 1468, ¶ 10 (1988) (INS is a "carrier providing exchange access services").

[15] At a minimum, AT&T is entitled to discovery on these issues and summary judgment should be denied pursuant to Fed. R. Civ. P. 56(d). *Shelton*, 775 F.3d at 556; *Miller*, 977 F.2d at 845; *Sames*, 732 F.2d at 51-52.

governing rate-of-return carriers, including the rate caps and rate parity rule for such carriers. *See* AT&T Answer at 37 (Sixth Defense); Countercls. ¶¶ 29-33, 63-70, 114.

Under the well-established doctrine of judicial estoppel, a party who successfully asserts a certain position in a judicial or regulatory proceeding may not thereafter assert a contrary or plainly inconsistent position in a separate proceeding simply because its interests have changed.[16] Here, INS has done precisely that – at a minimum, there is a factual dispute that INS itself has created by taking inconsistent positions before the FCC and this Court.

In this case, INS's position is that it is not a "Rate-of-Return Carrier," because the FCC's regulations define such carriers as "incumbent local exchange carriers" that are regulated via traditional rate-of-return regulation. 47 C.F.R. § 51.903(g). INS claims that it is not an incumbent local exchange carrier because it does not provide telephone services directly to end users. *See* 47 C.F.R. § 51.5 (defining "incumbent LEC").

However, for years, INS has taken an inconsistent position before the FCC, specifically by repeatedly filing tariffs for access services – including the very tariff filings at issue in this case – pursuant to the FCC's rules and procedures that apply to rate-of-return incumbent LECs. The FCC permits rate-of-return, incumbent local exchange carriers to file access service tariffs on a periodic basis pursuant to Rules 61.38 or 61.39. *See* Countercls. ¶ 66. As explained in further detail in the Habiak Certification, INS has made numerous regulatory filings over many years pursuant to Rule 61.38, which is one of the rules under which rate-of-return incumbent

---

[16] *New Hampshire v. Maine*, 532 U.S. 742, 749-51 (2001); *see, e.g.*, *In the Matter of: Time Warner Cable, A Division of Time Warner Entm't Co., L.P.*, 21 FCC Rcd. 9016, 9019 ¶¶ 11-15 & n.25 (2006) (holding that a company was judicially estopped from asserting an argument that contradicted a position taken by the company in a separate proceeding) (citing *Review Of The Section 251 Unbundling Obligations Of Incumbent Local Exchange Carriers*, Second Report and Order, 19 FCC Rcd 13494, 13499 ¶ 8, n.34 (2004)).

LECs file access tariffs.[17] For example, in INS's 2012 and 2013 tariff filings, INS represented to the FCC that INS was filing "in accordance with" FCC orders that "establishe[d] procedures for the 2012 [/2013] filing of annual access charge tariffs and Tariff Review Plans (TRPs) ***for incumbent local exchange carriers (ILECs)*** subject to price caps . . . and ***those ILECs*** subject to Section 61.38 of the Commission's rules."[18] Indeed, since its formation in 1987, INS has always been operated and regulated as a dominant, rate-of-return regulated carrier providing exchange access services. *See* Countercls. ¶¶ 29-33, 64. And, in a 2008 submission to the FCC on behalf of INS and two other CEA providers, INS stated, in a filing signed by its President, that "the CEA providers are regulated on a rate-of-return basis."[19]

The FCC has accepted those representations and permitted INS to avail itself of the streamlined filing procedures applicable to ILECs.[20] Based on the tariff filings that INS made pursuant to the rules applicable to rate-of-return incumbent LECs, INS has obtained enormous benefits, including the ability to bill and (from some long distance carriers) collect millions of dollars of tariffed access charges. Despite having reaped those benefits from the tariffs INS has filed pursuant to the FCC's rules and procedures applicable to ILECs, INS is now taking the position that certain other FCC rules that are applicable to rate-of-return regulated ILECs are *not* applicable to INS. *See* Compl. ¶¶ 71-80. INS cannot have it both ways—consistently filing

---

[17] *See* Habiak Cert. ¶¶ 2, 4-14; *see also* Compl. ¶ 54 (stating that INS files its tariffs under § 61.38).

[18] Habiak Cert. ¶¶ 5-13 & Ex. B (INS 2012 Description) & Ex. C (INS 2013 Description).

[19] Habiak Cert. Ex. A. (Comments of the Equal Access Service Providers, WC Docket No. 05-337, 2 (filed Nov. 26, 2008)); *see also* Countercls. ¶ 67.

[20] *See also, e.g.*, *In the Matter of July 3, 2012 Annual Access Charge Tariff Filings*, 27 FCC Rcd. 7322, 7323 ¶ 2, 7328 App. A (2012) (listing INS as one of the ILECs that filed an annual access tariff filing in 2012 pursuant to section 61.38 for rate-of-return LECs regulated pursuant to that section of the Commission's rules); *In the Matter of July 1, 2008, Annual Access Charge Tariff Filings*, 23 FCC Rcd. 10316, 10316, ¶ 1, 10319, App. (2008) (listing INS as one of the LECs that filed tariff filings pursuant to regulations applicable to certain rate-of-return regulated LECs).

annual revised tariffs with the FCC according to rules and procedures applicable to ILECs to enjoy the benefits of those rules, but then claiming that INS need not comply with the caps and rate reductions that the FCC has required of LECs, including rate-of-return ILECs. *See Connect America Order* ¶¶ 800-801.

At a minimum, by arguing that it is not a rate-of-return regulated, incumbent local exchange carrier—a position that is inconsistent with INS's prior representations in numerous regulatory filings—INS has created a material factual dispute, which precludes INS from being awarded summary judgment and as to which AT&T is entitled to discovery. *Shelton*, 775 F.3d at 556; *Doe*, 480 F.2d at 257; *Miller*, 977 F.2d at 845; *Dowling*, 855 F.2d at 139, 140-41; *Sames*, 732 F.2d at 51-52.

***Even If INS Is Not A "Rate of Return Carrier," INS Is Subject To The Rate Caps And Rate Parity Rules Applicable to a "Competitive LEC."*** Even if INS were ultimately to establish that it is not a "Rate-of-Return Carrier," nor estopped from denying that it is, INS's tariffed rates and billed charges would still exceed the FCC's rate caps and rate parity rule that apply to "Competitive LECs." 47 C.F.R. § 51.911 (rules for "competitive LECs"). For purposes of its 2011 rules, the FCC has defined "competitive LEC" as "***any***" LEC that "is *not* an incumbent [LEC]." 47 C.F.R. § 51.903(a). It is indisputable that INS is a "Local Exchange Carrier" or LEC.[21] Accordingly, even if INS were not a rate-of-return incumbent LEC, then under the rules it would be a "competitive LEC" subject to the rate caps and rate parity rules set forth in 47 C.F.R. § 51.911.

---

[21] *See* Pl.'s Br. Supp. Mot. Dismiss Counterclaims under Rule 12(b)(6) ("Pl.'s MTD Br.") at 32 (conceding that INS qualifies as a LEC, as that term is defined in FCC regulations); *see also* 47 C.F.R. § 51.5 (defining LEC as any entity providing exchange access); 47 U.S.C. § 153(20) (defining exchange access); *INS Order*, 3 FCC Rcd. 1468, ¶ 10 (INS is a "carrier providing exchange access services").

In order to succeed on its affirmative claims, INS must have a lawful tariff in place. *Security Servs., Inc. v. K Mart Corp.*, 511 U.S. 431, 444 (1994) (carriers may not collect fees "based on filed, but void, rates"). Because there are numerous material facts in dispute as to whether INS's tariff is valid given that its rates are in violation of established rate caps—or, at a minimum, a material question of fact as to whether INS is subject to the FCC's rate caps—INS's Motion should be denied.

**2. INS Has Provided No Legal or Factual Support For Its Claim That A Carrier Can Rely on § 204(a)(3) To Amend The Rate Caps.**

INS's primary argument in its Summary Judgment Motion is that whether it is subject to the FCC's rate caps and rate parity rules is irrelevant, because even if it were, its tariff filings were not suspended by the FCC and thus became "deemed lawful" under Section 204(a)(3) of the Communications Act. INS Br. at 8-13. In effect, INS's position is that its tariff filings amended the FCC's 2011 rules (at least as applied to INS), and that, as a consequence, it has established that its tariffs are valid as a matter of law. This argument lacks merit, for the reasons previously explained by AT&T. AT&T MTD Opp. at 6-13.

In promulgating its rate caps, the FCC unambiguously mandated in its regulations that all LECs must comply with the rate caps in their tariffs.[22] Significantly, however, the FCC's regulations further provide that "LECs who are otherwise required to file tariffs" (as INS is) "***are required to tariff rates no higher than*** the default transitional rates," *e.g.*, the rate caps and rate parity rules. 47 C.F.R. § 51.905(b) (emphasis added). Consequently, the FCC regulations prohibit INS *both* from charging above-cap rates and from even filing a tariff with above-cap

[22] *See* 47 C.F.R. § 51.909(a)(1) (a rate-of-return carrier "*shall [] cap* the rates" for access services at levels existing in 2011); *id.* § 51.911(a)(1) ("no" CLEC "may increase the rate" for certain access services).

rates. *Id.* Nevertheless, in 2013, contrary to these valid and binding FCC regulations,[23] INS proceeded to file tariff revisions that raised its rate for primary switched access service by over 40 percent, to rates above those it had in place at the end of 2011.[24]

As such, INS's 2013 tariff revision violates the rate caps established in the *Connect America Order*, *id.* ¶¶ 800-01, as well as the tariff filing prohibition. 47 C.F.R. § 51.905(b). As AT&T has explained, in this context, nothing in the Act authorizes a carrier to file a tariff with a rate above the cap (*i.e.*, a rate that the FCC has *already* found to be unlawful) and then, if the tariff is not suspended by the FCC, to claim that the rate has been "deemed lawful" despite the prohibition against filing such a tariff in the first place. AT&T MTD Opp. 7-13. Simply put, the FCC is not required to suspend a tariff that it has already deemed unlawful and prohibited a carrier from filing.

Indeed, in a virtually identical context, the FCC explained that, where a "carrier is *prohibited* from filing a tariff," "any attempt to do so would violate the FCC's rules and render the prohibited tariff *void ab initio* if filed with the Commission. Thus, such a tariff cannot benefit from 'deemed lawful' status pursuant to Section 204(a)(3) of the Act."[25] In this case,

---

[23] The FCC's *Connect America Order* was affirmed in full on review. *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). INS never filed any challenge to the caps or rate parity rule.

[24] *See* Habiak Cert. ¶ 14 (INS's rate at the end of 2011 was 0.819 cents per minute, which it raised in July 2013 to 0.8960 cents per minute).

[25] Brief For *Amicus Curiae* Federal Communications Commission, filed in *PaeTec Commc'ns* v. *MCI Commc'ns Servs.*, No. 11-2268, et al. (3d Cir., filed Mar. 14, 2012) ("*PaeTec Amicus Brief*") 25 (citing *Global NAPS, Inc.* v. *FCC*, 247 F.3d 252, 259-60 (D.C. Cir. 2001) ("Merely because a tariff is presumed lawful upon filing does not mean that it is lawful"; rather, "[s]uch tariffs still must comply with the applicable statutory and regulatory requirements" and "[t]hose that do not may be declared invalid.")). The Supreme Court has held that when (as here) an agency's amicus brief reflects the agency's fair and considered view of the question, it is entitled to deference from courts. *Talk Am., Inc.* v. *Michigan Bell Tel. Co.*, 131 S. Ct. 2254, 2261 (2011) (deferring to FCC rule interpretation contained in amicus brief).

INS's July, 2013 tariff filing, which purported to raise INS's access rates above the 2011 rate cap, was likewise prohibited by the FCC's rules and "void *ab initio*."

Consistent with the FCC's views, in other cases in which carriers have attempted to file a tariff under § 204(a)(3) in an effort to evade the FCC's rules or effect a change in the substantive law, courts have readily held that the tariff is "*ultra vires*" and "must give way," because "a tariff cannot be inconsistent with the statutory framework pursuant to which it is promulgated." *See, e.g.*, *PaeTec v. Commpartners*, No. 08-0397 (JR), 2010 WL 1767193, at *4-5 (D.D.C. Feb. 18, 2010) (rejecting a carrier's reliance on the filed-rate doctrine and § 204(a)(3) to argue that a tariff purporting to impose access service charges on calls that were not subject to access charges under the Communications Act and the FCC's implementing rules was "deemed lawful," and holding that the tariff terms "were simply *ultra vires* and lacked legal force"). As the court recognized in *PaeTec v. Commpartners*, "[t]o treat tariffs [filed pursuant to § 204(a)(3)] as inviolable would create incentives to bury within tariffs provisions that expand their rates beyond statutory allowance in the hope that the FCC will not notice." *Id.* at *4.

Thus, based on the unambiguous mandate of the relevant regulations, the FCC's interpretation of those regulations in its *PaeTec Amicus Brief*, and the decision in *Commpartners*, if INS is subject to the FCC's rate caps, as AT&T plausibly alleged in its Counterclaims, then INS was prohibited from filing a tariff with rates above the FCC's rate caps.[26] 47 C.F.R. §§ 51.909; 51.911; 51.905(b).

Likewise, because the FCC's rate parity rule requires LECs to reduce their intrastate rates over time, *Connect America Order* ¶ 801, when INS failed to revise its tariffs to reduce its rates,

[26] None of the authorities cited by INS support its contrary and extreme interpretation of § 204(a)(3). *See* AT&T MTD Opp. at 12-13. If INS's view were accepted, it would not only give carriers incentives to hide unlawful terms and conditions from the FCC by burying them in their tariffs, but also would effectively give carriers the ability to re-write the law.

those tariffs also became unlawful and void.[27] Because carriers may not collect fees "based on filed, but void, rates," *Security Servs., Inc.*, 511 U.S. at 444, the material questions of fact as to the validity of INS's tariff preclude summary judgment on INS's affirmative claims.

### B. There Are Material Facts In Dispute As To Whether INS's Tariff Is Valid Given The Evidence That INS Has Engaged In Access Stimulation.

Even if the Court disagrees with AT&T regarding INS's violation of the FCC's rate caps, summary judgment still cannot be granted to INS because there also are material factual disputes as to whether INS is engaged in "access stimulation" under the FCC's rules. *See* 47 U.S.C. § 61.3(bbb). Under the FCC's rules, if INS is engaged in access stimulation, then it was obligated to file revised tariffs with the FCC.[28] Because INS has not revised its tariffs pursuant to the access stimulation rules, its existing tariffs are not valid if it has in fact engaged in access stimulation. *See Connect America Order* ¶ 697; *GS Texas Ventures*, 29 FCC Rcd 10541, ¶ 6 n.19.

As the plaintiff, INS bears the burden of establishing that its tariffs are valid and consistent with the FCC's rules, and because INS plainly knew that a disputed issue about the lawfulness of its tariffs was whether it was engaged in access stimulation, it was obligated in its Summary Judgment Motion to establish, as a matter of law, that it was *not* engaged in access

[27] *See GS Texas Ventures*, 29 FCC Rcd 10541, ¶ 6 n.19 ("Tariffs that are lawful at the time that they are filed may subsequently become unlawful based on particular circumstances. For example, . . . the tariff filings of a competitive local exchange carrier could become void if the CLEC engages in access stimulation and exceeds the benchmark rate.")

[28] *Connect America Order* ¶¶ 679; *id.* ¶¶ 680-94; *see also* 47 C.F.R. §§ 61.3(bbb) (defining access stimulation); *id.* §§ 61.26(g), 61.39(g). Indeed, even assuming, *arguendo*, that INS's tariffs were "deemed lawful" prior to the time that it engaged in access stimulation, the FCC's rules require INS to file revised tariffs, applicable prospectively, to replace the prior tariffs. If a carrier fails to do so, then the prior tariffs become void. *See GS Texas Ventures*, 29 FCC Rcd 10541, ¶ 6 n.19. Consequently, even if the Court were to find that INS's July 2013 tariff filing somehow amended the rate caps, it should still deny summary judgment because, under the access stimulation rules, INS would have been obliged to re-file the tariffs.

stimulation as defined by the FCC's rules. Fed. R. Civ. P. 56(c). Despite the centrality of this issue to the adjudication of INS's affirmative claims, INS did not submit *any* evidence to establish that it is not engaged in access stimulation. INS's Motion can be denied on this ground alone.

Even if INS had submitted some evidence that it is not engaged in access stimulation, then summary judgment for INS would still be improper, because AT&T is submitting evidence that INS is engaged in access stimulation, which creates a factual dispute. Habiak Cert. ¶ 16 & Ex. D. Further, if discovery were not stayed, then AT&T would be entitled to obtain documents, interrogatory responses, and deposition testimony aimed at whether INS is engaged in access stimulation as defined in Section 61.3(bbb) of the FCC's rules. At a minimum, under Rule 56(d), summary judgment should be denied until this discovery is complete.[29]

Under the FCC's rules, one of the "triggers" for engaging in access stimulation depends on the LEC's ratio of terminating access traffic to originating access traffic. This is because the FCC found that a common access stimulation scheme involved terminating very high volumes of traffic to conference or chat providers, and that in such instances, a traffic pumping LEC would be billing long distance carriers for much more terminating access minutes (*i.e.*, calls routed to the *called* party or to a conference bridge) than originating access minutes (calls routed from the *calling* party). Accordingly, the FCC concluded that, when a long distance carrier is billed by a LEC for at least three times as much terminating traffic as originating traffic, that "3:1 terminating-to-originating ratio . . . will create a rebuttable presumption that revenue sharing is occurring and that the LEC has violated the Commission's rules." *Connect America Order* ¶ 699; 47 C.F.R. § 61.3(bbb)(1)(ii).

---

[29] Hunseder Decl. ¶ 9 & Ex. 1 (Doc. Requests Nos. 1-3, 17, 20-21), Ex. 2 (Interrogatories Nos. 4, 7-8, 11) & Ex. 3 (Requests for Admission No. 4).

As set forth in the Habiak Certification, INS's access bills to AT&T easily satisfy the 3:1 ratio. Habiak Cert. ¶ 16 & Ex. D. Indeed, in INS's July 2014 bills to AT&T, the minutes billed for terminating switched access services were more than *30 times* the volume of the originating switched access services. *Id.* Based on this evidence alone, there is a clear and genuine dispute of material fact as to whether INS is engaged in access stimulation.[30]

In addition, with the stay of discovery, INS has not responded to AT&T's discovery request relating to the second requirement for finding "access stimulation" under the FCC's rules: the existence of a "revenue sharing agreement," as broadly defined therein. *See* 47 C.F.R. § 61.3(bbb)(1)(ii). And INS has not produced admissible evidence to establish indisputably that there is no such agreement or that there are no material facts in dispute as to whether its tariff is invalid due to its engagement in access stimulation. At a minimum, AT&T is entitled to discovery as to whether INS is engaged in access stimulation, including discovery as to the existence of a revenue sharing agreement between INS and Great Lakes. *Dowling*, 855 F.2d at 140-41; *Doe*, 480 F.2d at 257; *see* Countercls. ¶¶ 84-91; Hunseder Decl. ¶ 9 & Ex. 1 (Doc. Requests Nos. 1-3, 17, 20-21), Ex. 2 (Interrogatories Nos. 4, 7-8, 11) & Ex. 3 (Requests for Admission No. 4)

Because the evidence (based on the incomplete record to date) would allow a fact finder to conclude that INS is engaged in access stimulation, INS was obliged to file revised tariffs

[30] INS has claimed that the FCC's rebuttable presumption does not apply in federal court. AT&T disagrees with that claim, *see* AT&T MTD Opp. at 20-21, but even if it does not, under the Rule 56 standards, AT&T's evidence as to INS's traffic ratios are sufficient to create a factual issue. Given that INS has failed to produce any evidence addressing its access stimulation activities, while AT&T has submitted the traffic ratios, a reasonable finder of fact could rely on the traffic ratios to conclude that INS is engaged in access stimulation and, as a consequence, has not met its burden of proof establishing that its current tariffs are valid.

under the FCC's rules. *Connect America Order* ¶ 679. Because it did not, its current tariffs are not lawful or valid.[31] INS therefore cannot prevail on summary judgment.

## III. THERE ARE MATERIAL FACTS IN DISPUTE AS TO WHETHER INS HAS PROVIDED CEA SERVICE TO AT&T IN ACCORDANCE WITH A VALID TARIFF.

Section 203 of the Communications Act provides that "[n]o carrier . . . shall engage or participate in such communications unless schedules have been filed and published in accordance with the provisions of this Act and the regulations made thereunder." 47 U.S.C. § 203(c). Under this provision and the FCC's rules, carriers may not collect tariffed charges for regulated services unless and until they: (1) have a valid and lawful tariff for those services; and (2) have provided the services pursuant to the terms and conditions of such a tariff.[32]

In support of the Motion, INS claims that AT&T admitted that INS provided CEA service to AT&T. Pl.'s 56.1 Stmt. ¶¶ 8, 9. This is demonstrably false. AT&T's Answer expressly denied that "INS has valid tariffs and also denie[d] that INS has properly billed AT&T under INS's tariffs and/or the FCC's rules for any services that INS provided in connection with such calls." *See* Ans. ¶ 30. Because AT&T denied the allegations in the Complaint, to be awarded summary judgment, INS was required to submit evidence to indisputably establish that it did provide CEA service to AT&T in compliance with the terms of its tariff. Fed. R. Civ. P. 56(c). However, neither INS's Motion nor the Schill Affidavit addresses this core evidentiary

[31] *See Connect America Order* ¶ 697 ("a LEC's failure to comply with the requirement that it file a revised tariff if the trigger is met constitutes a violation of the Commission's rules, which is sanctionable under section 503 of the Act. We also conclude that such a failure would constitute 'furtive concealment.'"). When a carrier engages in furtive concealment, any "deemed lawful" protections that would have applied to its tariff would be rejected. *See ACS of Anchorage, Inc. v.* FCC, 290 F.3d 403, 413 (D.C. Cir. 2002).

[32] *Advamtel*, 118 F. Supp. 2d at 683; *see also* 47 U.S.C. § 203(c) (prohibiting carriers from billing for services not set forth in their tariffs); *AT&T Corp* v. *YMax Commc'ns*, 26 FCC Rcd. 5742, ¶ 12 (2011) ("a carrier may lawfully assess tariffed charges only for those services specifically described in its applicable tariff").

point, which is an essential element of INS's affirmative claims. Even if INS had proffered admissible evidence that it provided AT&T with CEA service, AT&T would still be entitled to discovery as to whether INS complied with the terms and conditions of its tariff, warranting denial of INS's Motion pursuant to Rule 56(d).[33]

Because AT&T's denial of the allegations in the Complaint raises a material question of fact as to whether INS provided CEA service to AT&T in accordance with a valid tariff, INS's failure to offer any evidence to establish the absence of any factual dispute on this issue precludes a grant of summary judgment on INS's tariff claims. Accordingly, INS's Motion should be denied for this reason as well.

## CONCLUSION

For the foregoing reasons, INS's Motion for Summary Judgment should be denied in full, with prejudice.

Dated: June 1, 2015

Respectfully submitted,

**DAY PITNEY LLP**
One Jefferson Road
Parsippany, NJ 07054
Tel: 973-966-8119
Fax: 973-206-6129
rbrown@daypitney.com

By: s/ Richard H. Brown

**SIDLEY AUSTIN LLP**
Michael J. Hunseder (*pro hac vice*)
1501 K Street, N.W.
Washington, DC, 20005
Phone: 202-736-8000
Fax: 202-736-8711

Attorneys for AT&T Corp.

[33] *Shelton*, 775 F.3d at 556; *Miller*, 977 F.2d at 845; *Sames*, 732 F.2d at 51-52.

## CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of AT&T's brief and other papers submitted in opposition to Plaintiff's Motion for Summary Judgment via ECF to:

Robert Levy, Esq.
Scarinci Hollenbeck
1100 Valley Brook Avenue
Lyndhurst, NJ 07071-0790
Tel: (201) 896-4100 (ext. 3303)
Fax: (201) 896-8660
Email: rlevy@scarincihollenbeck.com

James U. Troup, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street, Suite 1100
Arlington, VA 22209
Tel: (703) 812-0511
Fax: (703) 812-0486
troup@fhhlaw.com

Attorneys for Plaintiff Iowa Network Services, Inc.:

s/ Richard H. Brown

Dated: June 1, 2015

# Exhibit 85

## AT&T INS Wholesale Traffic - 2014 to 2017

## HIGHLY CONFIDENTIAL MATERIALS OMITTED